CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 466.

CAROLINE W. DOBBINS, PLAINTIFF IN ERROR,

vs.

THE CITY OF LOS ANGELES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

(19,051.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 400.

CAROLINE W. DOBBINS, PLAINTIFF IN ERROR,

vs.

THE CITY OF LOS ANGELES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1–4 *Transcript on Appeal.*

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Respondent. } L. A., No. 1330.

Appeal from the superior court of Los Angeles county. Lucien Shaw, judge.

Lynn Helm, Lee, Scott, Bailey & Chase, attorneys for plaintiff and appellant.

W. B. Mathews, attorney for defendant and respondent.

Endorsed: Filed this 20 day of October, 1902. Geo. W. Root, clerk, by H. S. Simpson, deputy clerk.

5 In the Superior Court of the State of California in and for the County of Los Angeles.

CAROLINE W. DOBBINS, Plaintiff,
vs.
THE CITY OF LOS ANGELES, a Municipal Corporation, Defendant.

Complaint.

The plaintiff complains and alleges:

That at all times mentioned in this complaint the said defendant The City of Los Angeles is and was a municipal corporation duly organized under the laws of the State of California, and situate in the county of Los Angeles aforesaid.

That on or about the 1st day of August, A. D. 1901, the said plaintiff, contemplating the erection of gas works for the purpose of the manufacture, recovery, storage and distribution of gas for the purpose of supplying the inhabitants of the city of Los Angeles and inhabitants of cities neighboring and adjacent thereto, caused
6 to be organized a corporation known as the Valley Gas and Fuel Company and the said Valley Gas and Fuel Company, was, at the instance of the said plaintiff, on or about the 8th day of August, 1901, duly organized under and by virtue of the laws of the State of California.

That after the organization of the said Valley Gas and Fuel Company, and on or about the 1st day of September, 1901, the said plaintiff made and entered into a certain contract with the said Valley Gas and Fuel Company to build, construct and erect for her

on certain premises to be designated by her and as hereinafter described, certain gas works, including coke ovens and all things necessary for the manufacture, recovery, storage and distribution of gas, said gas works in themselves consisting of gas generators, gas washers, and scrubbers, purifier and gas holder and tank, the same to be all complete and to be delivered to the said plaintiff on or before the 1st day of January, 1902.

That after the making of the said contract between the said plaintiff and the said Valley Gas and Fuel Company to erect and construct said works, the said plaintiff took such steps as were necessary to carry out her intentions as hereinbefore set forth, and the said Valley Gas and Fuel Company entered into divers and sundry contracts with divers and sundry persons to do the work necessary in the erection of said coke ovens and gas works.

That on or about the 26th day of August, 1901, the common council of the city of Los Angeles attempted to pass a purported ordinance known as ordinance No. 6663, (new series), entitled
7 "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," which said ordinance was on the 26th day of August, 1901, attempted to be approved by the mayor of the city of Los Angeles, and duly published in the official paper of the city of Los Angeles in accordance with the provisions of the charter of the said city of Los Angeles, which said purported ordinance is in words and figures as follows, to wit:

Ordinance No. 6663 (new series).

An ordinance prohibiting the erection or maintenance of gas-works, gas tanks or reservoirs within certain portions of the city of Los Angeles.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly
8 along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto

street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the city jail for not less than thirty (30) days nor more than one hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this ordinance, shall be deemed a separate offense within the meaning of this ordinance.

SECTION 3. Ordinance No. 174 approved July 2nd, 1885,
9 and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. The city clerk shall certify to the passage of this ordinance and cause the same to be published once in the Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of August 26th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of August, 1901.

M. P. SNYDER, *Mayor.*

That thereafter, within the territory of the city of Los Angeles within which by said purported ordinance last hereinbefore set forth it was lawful to erect or maintain gas-works, gas tanks or reservoirs for the manufacture of gas, and on or about the 28th day of September, A. D. 1901, the said Caroline W. Dobbins, for the purpose of erecting the gas-works contemplated by her as aforesaid, purchased the following described premises situate in the city of Los Angeles and State of California, to wit: all of lots 16, 17 and 18, of block 2, Pomeroy & Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199, miscellaneous records of said Los Angeles county; also that part of lot 15 in said block 2 described

as follows, to wit: Commencing at a point in the northerly line of St. John street at the most southerly corner of said lot 15, thence along the dividing line between lots 15 and 16 of said block 2, north 45° west 38.50 feet to a point; thence north 34° 2′ east 9.64 feet to a point; thence north 29° 42′ east 50 feet to a point; thence north 22° 18′ east 44.28 feet to a point in the westerly line of the tract conveyed to D. McCool, trustee, by deed recorded in Book 461, page 7, of deeds, records of said Los Angeles county; thence along the westerly line of said tract conveyed to D. McCool, trustee, south 3° 37′ west 106.37 feet to a point in the northerly line of St. John street; thence along the northerly line of St. John street 44° west 18.3 feet to the place of commencement.

And the said plaintiff further alleges that on or about the 28th day of December, A. D. 1899, the city council of the city of Los Angeles passed a certain ordinance known as ordinance No. 6108, new series, of the city of Los Angeles, entitled "An ordinance regulating the manner of constructing, altering, repairing, moving (when moved without entering upon a public street or alley), of buildings in the city of Los Angeles; providing for the issuing of permits for the same, and for the condemnation of buildings and other structures when dangerous to property, life or limb." That section 101 of said ordinance, which was in force on the 1st day of November, 1902, was in words and figures as follows: "It shall be unlawful for any person, firm, or corporation, to erect or cause to be erected, maintain or cause to be maintained, occupy or cause to be occupied, any livery stable, blacksmith shop, stone crusher, rolling mill, planing mill, carpet beating establishment, fireworks factory, soap factory, gas-works, or other factory where power other than animal power or water power is used, within the corporate limits of said city without a permit from the fire commissioners so to do. Before any such permit shall be granted, the clerk of the board of fire commissioners shall mail a notice to each record owner of real property in the block in which it is intended to erect the building or structure for which the permit is sought, by depositing in the United States post office, a postal card directed to each such record owner of property at his last known address, notifying said record owner of the fact that such permit is applied for, the nature of the same, and the time and place when and where the application for the granting of the same will be heard. Said board shall at such hearing give an opportunity to all parties interested to be heard, and shall have power to grant or refuse such permit. The costs of mailing said notice to be first deposited, by said applicant, with the clerk of said board."

And the said plaintiff further alleges that by the charter of the city of Los Angeles it is provided that there shall be four fire commissioners appointed by the council of the city of Los Angeles, and that they should have such powers and perform such duties as should be granted or imposed by ordinance; that pursuant to said charter fire commissioners were appointed by the said common coun-

cil of the city of Los Angeles as follows: J. Frankenfield, O. A. Vickery, J. Kuhrts, and B. O. Webb.

The plaintiff further shows and alleges that pursuant to the regulations in said ordinance last hereinbefore set forth prescribed, and said ordinance as hereinbefore set forth being in full force and effect, on or about the first day of November, A. D. 1901, the said
12 Caroline W. Dobbins, for the purpose of manufacturing, recovering, and distributing gas, made application to the board of fire commissioners of the city of Los Angeles, for a permit to erect gas works, which application of the said Caroline W. Dobbins to the said board of fire commissioners was in words and figures as follows:

To the Hon. M. P. Snyder, mayor of the city of Los Angeles, and the board of fire commissioners.

GENTLEMEN: The undersigned, Caroline W. Dobbins, a resident of the county of Los Angeles and State of California, for the purpose of manufacturing, recovering and distributing gas, respectfully asks for a permit from the fire commissioners to erect works for the manufacture, recovery and storage of gas upon the following described premises, situate in the city of Los Angeles, State of California, to-wit:

All of lots sixteen (16), seventeen (17) and eighteen (18) in block two (2), Pomeroy and Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199, miscellaneous records of said Los Angeles county. Also that part of lot fifteen (15) in said block two (2) described as follows, to-wit:

Commencing at a point in the northerly line of St. John street at the most southerly corner of said lot fifteen (15); thence along the dividing line between lots fifteen (15) and sixteen (16) of said block two (2), north forty-six degrees (46°) west thirty-eight and fifty one hundredths (38.50) feet to a point; thence north thirty-four
13 degrees and two minutes (34° 2′) east, nine and sixty-four one hundredths (9.64) feet to a point; thence north twenty-nine degrees and eighteen minutes (22° 18′) east forty-four and twenty-eight hundredths (44.28) feet to a point in the westerly line of the tract conveyed to D. McCool trustee, by deed recorded in Book 461, page 7 of deeds, records of said Los Angeles county; thence along the westerly line of said tract conveyed to D. McCool trustee, south three degrees and thirty-seven minutes (3° 37′) west, one hundred and six and thirty seven hundredths (106.37) feet to a point in the northerly line of St. John street; thence along the northerly line of St. John street south forty-four degrees (44°) west, eighteen and three-tenths (18.3) feet to the place of commencement.

Said premises are within the limits prescribed by an ordinance passed by the city council of the city of Los Angeles on the 29th day of August, 1901, in which it shall be lawful to erect and maintain works for the manufacture of gas. Said gas works are to consist of fire proof buildings and tanks to be constructed of iron, brick,

stone and concrete, and no buildings, tanks or other works are to be constructed thereon of any combustible material.

That the gas so manufactured or so to be manufactured is to be supplied to the inhabitants of the city of Los Angeles for illuminating purposes only.

(Signed) CAROLINE W. DOBBINS.

That said application of the said plaintiff was on the said day of November, 1901, duly presented to the board of fire commissioners of the city of Los Angeles, and was by them referred to the
14 chief of the fire department for investigation and report, and thereafter, on the 8th day of November, 1901, the application of the said plaintiff, Caroline W. Dobbins for permission to establish gas works was taken up by the said board of fire commissioners; the clerk of the board of fire commissioners reported that the petitioner had advanced the costs of sending required notification to property owners as prescribed in the building ordinance as aforesaid, and that notices had been sent, notifying the record owners of the property in the block in which it was intended to erect said building or structure for which permit was sought or the fact that such permit was applied for, the nature of the same and the time and place when and where the application for the granting of the same would be heard.

That at said meeting of the board said board gave an opportunity to all persons interested to be heard, and on motion duly made then and there took the said application and the matters therein referred to under advisement; that afterwards, and on about the 22nd day of November, 1901, such further proceedings were had before the board of fire commissioners aforesaid, upon said application, that on motion the application of said plaintiff, the said Caroline W. Dobbins, for permission to erect and maintain a gas works was taken from the table, and it was duly moved and seconded that the application be granted; that upon the hearing of said motion three of said commissioners, to-wit, Commissioners Webb, Vickery and Frankenfield voted aye, and Commissioner Kuhrts, no; and there-
15 upon, after said vote was announced, the said commissioner Kuhrts directed the clerk of the board to change his vote on said motion from no to aye, and gave notice that on the next meeting he would move to reconsider the question.

That afterwards, and on the 29th day of November, 1901, at the next meeting of the board of fire commissioners, in accordance with the notice given at the last meeting, Commissioner Kuhrts moved to reconsider the motion made at the last meeting to grant to Caroline W. Dobbins a permit to erect gas works, which motion was lost by the following vote: No, Commissioners Webb, Vickery and Frankenfield; aye, Commissioner Kuhrts and Mayor Snyder; all of which will, by the records of said fire commissioners now in the hands of the clerk of said fire commissioners or by a copy thereof ready to be produced upon the trial hereof, more fully and at large appear. And the said plaintiff further shows and alleges that im-

mediately upon the granting of the said permit, and on the same day, to-wit, the said 22nd day of November, 1901, the said plaintiff gave directions to the said Valley Gas & Fuel Company to proceed to carry out its contract with her, and directed the said Valley Gas & Fuel Company to erect the said gas works and coke ovens, upon the premises of the said plaintiff hereinbefore described, and to commence work thereon at once; that immediately, and on the said 22nd day of November, 1901, pursuant to the direction of the said plaintiff, the said Valley Gas & Fuel Company entered into divers and sundry contracts with divers and sundry persons for the erection of certain portions of said gas works and coke ovens, and
16 more particularly with one C. J. Kubach, a builder and contractor in the city of Los Angeles, who then and there on said date last aforesaid commenced the laying of the cement foundation for the water tank, gas holder, scrubbers and generators, which were to be erected thereon pursuant to the contract entered into between the Valley Gas & Fuel Company and the plaintiff, for the benefit of the plaintiff.

That pursuant to said contract the said C. J. Kubach laid the foundations last hereinbefore specified, at a cost of upwards of the sum of $2500.00; that said foundations are of great strength, and are of very costly material, and that if the same should have to be destroyed or removed it would cause irreparable damage and injury both to the plaintiff and the said Valley Gas & Fuel Company, as the same are the foundations of all the work constructed by the Valley Gas & Fuel Company for the said plaintiff as hereinafter specifically described.

And the plaintiff further shows and alleges that on or about the 25th day of November, 1901, after granting of the said permit to the said plaintiff by the said board of fire commissioners, to erect the said gas works upon the premises hereinbefore described, within the district within which it was lawful to erect gas works as aforesaid in the city of Los Angeles, and after the material had all been placed upon the ground by the said C. J. Kubach for the erection of the said foundations and said foundations had been nearly laid and completed, the city council of the city of Los Angeles attempted to pass a purported ordinance purporting to be an ordinance
17 entitled "An ordinance amending ordinance 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," which said purported ordinance is in words and figures as follows:

Ordinance No. 6779 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26th, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line
18 of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence southeasterly following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

19 I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of November 25th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of November, 1901.

M. P. SNYDER, *Mayor.*

And the plaintiff further alleges that she is advised and therefore avers that said purported ordinance last hereinbefore set forth attempted to be passed by the city council of the city of Los Angeles, on the 25th day of November, 1901, is void and invalid, in that it is uncertain, unreasonable, and is an attempt to regulate in an unlawful manner and without authority of law the business of erecting gas works within the city of Los Angeles, and is in violation of the rights of said plaintiff, secured to her by virtue of the contract entered into between her and the Valley Gas & Fuel Company, and in violation of the rights granted to the said plaintiff by the city of Los Angeles on the 22nd day of November, 1901, as aforesaid, and is in violation of the provisions of the constitution of this State, and of the Constitution of the United States prohibiting the passing of any law impairing the obligations of contracts.

And the plaintiff further shows and alleges that since the granting of the said permit to the said plaintiff by the said board of fire commissioners of the city of Los Angeles on the 22nd day of November, 1901, as aforesaid, the said plaintiff, through the said Valley Gas & Fuel Company, by reason of the contract aforesaid for the erection of said gas works and on her behalf, and until the commission or the acts of the said defendant hereinafter set forth,
20 has been peaceably and lawfully engaged in the erection of the gas works upon the premises of the said plaintiff hereinbefore specifically described and the said Valley Gas & Fuel Company and its employees and subcontractors under the contract with the said plaintiff, have been engaged upon said premises in carrying out said contract, and until the commission of the acts of the said defendant hereinafter set forth, have been peaceably and lawfully engaged in the erection of the gas works hereinbefore specifically described; that during said time the said Valley Gas & Fuel Company, for the said plaintiff, has erected upon said premises, complete, the said gas generator, and also the scrubbers and washers used in the manufacture of gas; that said generators and scrubbers are all complete except a connection therewith by a pipe necessary therefor of about six feet in length and twelve inches in diameter; that the water tank and gas holder has been commenced upon the same foundation prepared therefor by the said C. J. Kubach under his contract with the said Valley Gas & Fuel Company aforesaid, and was, until the commission of the acts hereinafter mentioned, in process of construction without interruption by one Davis & Farnum, manufacturing company, a corporation organized under and by virtue of the laws of the State of Massachusetts, engaged in the business of manufacturing gas holders and gas tanks, under a contract with the Valley Gas & Fuel Company for the said plaintiff; that said water tank is to be sixty-two feet in diameter by twenty feet nine inches in height, and of a capacity of about 467,700 gallons of water, said tank
21 to be made of sheet steel and iron to have steel bottoms thoroughly riveted and made water tight, with sides consisting of four steel rims each, of about five feet in height, thoroughly

riveted and made water tight, on the top and outside of said tank a runaround of steel two feet six inches in width, together with braces for said tanks sixty feet nine inches in height, with twenty girders, reinforced with forty-eight tie-bars, and also wind braces; the textile strength of said water tank to be 62,000 pounds to the square foot; that inside of the said water tank is to be erected the steel gas holder of a capacity of 100,000 cubic feet of gas, consisting of two lifts with proper curbs and cups, each lift being made of steel, eight sheets, with cups and curbs all properly constructed and completed, the same to be done as quickly and speedily as possible, the said holder to be all complete and delivered of the best material suitable for such purpose and in a good and workmanlike manner, for the benefit of the said plaintiff in enabling her to complete the erection of the said gas works as hereinbefore set forth; that the said water tank and holder when completed will cost the sum of $13,685.00; that all the iron and steel used in the construction of said tank and gas holder are upon the ground ready to be put in place, and that said tank at this time is erected to the height of 15 feet and nine inches, and if the said contractors so engaged in erecting said work shall be allowed to complete the said tank they will in the course of a week or ten days have the same fully completed, and within six weeks from this time will have the gas holder completed and
22 put in place ready to be delivered to the said plaintiff; and the said plaintiff further avers that if the said work of erecting said gas works can be continued peaceably and without interference from the said defendant, that the same will be completed and ready for operations within the period of about six weeks from the date hereof;

And the said plaintiff further shows and alleges that while the said plaintiff and said contractors and subcontractors were lawfully and peaceably engaged in the erection of said gas works and gas holders, up to and including the 25th day of February, 1902, on the said 25th day of February, 1902, the said defendant, The City of Los Angeles, combining and confederating with one James R. C. Burton, and with divers and sundry persons to the said plaintiff unknown, in the name of the people of the State of California, instituted a proceeding in the police court of the city of Los Angeles, against one F. A. Smith and one Thaddeus Lowe, then and there in the employ of the Valley Gas & Fuel Company in the erection of said gas works on the said premises of the said plaintiff hereinbefore described, charging the said F. A. Smith and the said Thaddeus Lowe with having committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected certain works establishments and manufactory for the manufacture of gas and a certain reservoir and receptacle for the storage of gas within the corporate limits of the said city of Los Angeles attempted to be described in said purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 25th day of
23 November, 1901, last hereinbefore set forth; and thereupon, upon the complaint filed in said proceedings in the said

police court by the city of Los Angeles on the 27th day of February, 1902, caused the arrest and detention of the said Thaddeus Lowe and the said F. A. Smith upon a warrant issued by the judge of said police court of the city of Los Angeles for the alleged violation of the said city ordinance; that on the first day of March, 1902, the said city of Los Angeles again combining and confederating with the said James R. C. Burton and with divers and sundry persons to this plaintiff unknown, in the name of the people of the State of California, instituted another proceeding in the police court of the city of Los Angeles against the said F. A. Smith, and the said Thaddeus Lowe, and also against H. S. Stephens, W. H. Bolte, E. E. Miles, and William A. Kennedy, then and there engaged upon said premises in the employ of the said Valley Gas & Fuel Company or of other persons engaged on the work of erecting said gas works for the said plaintiff on the premises of the said plaintiff hereinbefore described, charging the said F. A. Smith and the said Thaddeus Lowe and the said H. S. Stephens and the said W. H. Bolte, and the said E. E. Miles and the said William A. Kennedy with having committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected certain works, establishments, and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of the said city of Los Angeles, and outside of the limits of the
24 alleged district described in said purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, as hereinbefore set forth; and thereupon, on the complaint filed in said proceedings in said police court of the city of Los Angeles on the 1st day of March, 1902, caused the arrest and detention of the said F. A. Smith, Thaddeus Lowe, H. S. Stevens and W. H. Bolte, E. E. Miles and William A. Kennedy, upon a warrant issued by the judge of the said police court of the city of Los Angeles for the violation of the said alleged ordinance;

That afterwards, on the 1st day of March, 1901, the said city of Los Angeles, again combining and confederating with the said James R. C. Burton, and with divers and sundry other persons, to said plaintiff unknown, in the name of the people of the State of California, instituted another proceeding in the police court of the city of Los Angeles against the said F. A. Smith, Thaddeus Lowe, William Bolte, H. S. Stephens, W. A. Kennedy, E. E. Miles, Morton Daly, Thomas Malone, Thomas A. Scott, William Hoff, Ransom Kallahan, W. B. Burner, E. B. Glasgow, Nolan J. Breston, G. J. Odell, and Elmer Edwards, engaged in the erection of the said gas works for the said plaintiff or her contractors on the premises of the said plaintiff hereinbefore described in carrying out the contracts entered into between the said plaintiff and the said Valley Gas & Fuel Company for the erection of the said gas works aforesaid, charging the said F. A. Smith, Thaddeus Lowe, William Bolte,
H. S. Stephens, W. A. Kennedy, E. E. Miles, Morton
25 Daly, Thomas Malone, Thomas A. Scott, William Hoff, Ran-

som Kallahan, W. B. Burner, E. B. Glasgow, Nolan J. Breston, G. J. Odell, and Elmer Edwards, with having committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected certain works, establishments and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of said city of Los Angeles, and outside of the limits of the alleged district described in the said purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, as hereinbefore set forth; and thereupon, upon the complaint filed in said proceeding in the said police court of the city of Los Angeles on the 3rd day of March, 1902, the said city of Los Angeles caused the arrest and detention of the said Thaddeus Lowe, F. A. Smith, William Bolte, H. S. Stephens, W. A. Kennedy, E. E. Miles, Morton Daly, Thomas Malone, Thomas A. Scott, William Hoff, Ransom Kallahan, W. B. Burner, E. B. Glasgow, Nolan J. Breston, G. J. Odell, and Elmer Edwards, upon the warrant issued by the judge of the said police court of the city of Los Angeles for the alleged violation of said alleged city ordinance.

The plaintiff further alleges and avers that the arrest and detention of the said employees of the said plaintiff and her said contractors whose names are hereinbefore set forth has seriously interfered with and interrupted the work of the said plaintiff and of her said contractors in erecting the said gas works, and is in
26 violation of the rights of the said plaintiff as acquired under and by virtue of her contract with the said Valley Gas & Fuel Company, and in violation of the rights granted to the said plaintiff by the City of Los Angeles on the 22nd day of November, 1901;

And the said plaintiff further alleges that afterwards, on the 3rd day of March, 1902, the City of Los Angeles, recognizing the invalidity of the said alleged ordinance so by the common council of the city of Los Angeles attempted to be passed and adopted on the 25th day of November, 1901, as hereinbefore set forth, by its mayor and council attempted to pass another purported ordinance entitled "An ordinance amending ordinance number 6663, new series, entitled, 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks. or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," which said purported ordinance is in words and figures as follows:

Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance
27 of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901 be, and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of
28 Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeastelry, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los

Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

And the said plaintiff further alleges that she is advised and therefore avers that said purported ordinance last herein set forth attempted to be passed by the city council of the city of Los Angeles on the 3rd day of March, 1902, is void and invalid in that it is uncertain and unreasonable, and is an attempt to regulate in an
29 unlawful manner and without authority the business of erecting gas works within the city of Los Angeles and is in violation of the rights of the said plaintiff, secured to her by virtue of her contract entered into between her and the said Valley Gas & Fuel Company, in violation of the rights secured and granted to her by the City of Los Angeles on the 22nd day of November, 1901, as aforesaid, and is in violation of the provisions of the constitution of the State of California, and of the Constitution of the United States, prohibiting the passing of any law impairing the obligations of contracts.

And the said plaintiff further says and alleges that said ordinance last hereinbefore set forth was on the 3rd day of March, 1902, approved by the mayor of the city of Los Angeles, and was afterwards, on the 5th day of March, 1902, published in the Los Angeles Daily Journal, as in and by said alleged ordinance provided. Plaintiff is advised and therefore avers that if said ordinance is a valid ordinance in so far as it may have been regularly adopted by the City of Los Angeles and approved by the mayor and published in the Los Angeles Daily Journal as aforesaid, that the same has repealed the alleged ordinance heretofore attempted to be passed by the city council of the city of Los Angeles on the 25th day of November, 1901, and that said ordinance of November 25th, 1901, as hereinbefore set forth is thereby made no longer of any force and effect.

And the said plaintiff further says and alleges that she has been endeavoring in all respects as she lawfully might, to erect and have erected upon the premises hereinbefore described the said gas
30 works, but that while the men in the employ of the said plaintiff and of the said subcontractors by her engaged in the contracts aforesaid, were engaged in the erection of said gas works, the City of Los Angeles, on the 6th day of March, 1902, again combining and confederating with the said James R. C. Burton, and with divers and sundry other persons to this plaintiff unknown, in the name of the people of the State of California, instituted another proceeding in the police court of the city of Los Angeles against the said Thaddeus Lowe, F. A. Smith, M. Daly, R. Colahan, A. Burgess, W. B. Verner, F. Mullen, E. V. Glasgow, J. Ryan, J. Pelo, P. Hussey, R. J. Nieto, C. H. Tyler, W. Huff, T. A. Sealt, W. Bastock, W. Nolan,

H. S. Malone, J. I. Alvarez, A. J. Shaw, M. Ortlip, J. Breslin, G. O'Dell, E. E. Miles, employees engaged in the erection of said gas works upon the premises aforesaid, charging said F. A. Smith and the said Thaddeus Lowe and the said M. Daly and the said R. Colahan and the said A. Burgess and the said W. B. Verner and the said F. Mullen and the said E. V. Glasgow and the said J. Ryan and the said J. Pelo and the said P. Hussey and the said R. J. Nieto and the said C. H. Tyler and the said W. Huff and the said T. A. Sealt and the said W. Bastock and the said W. Nolan and the said H. S. Malone and the said J. I. Alvarez and the said A. J. Shaw and the said M. Ortlip and the said J. Breslin and the said G. O'Dell and the said E. E. Miles with having committed a misdemeanor in that they did wilfully and unlawfully erect or cause to be erected, maintain or cause to be maintained, certain works, establishments
31 and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of the said city of Los Angeles, and outside of the limits of the alleged district described in the said purported ordinance attempted to be passed by the city council of the city of Los Angeles on the 3rd day of March, 1902, as hereinbefore set forth; and thereupon, upon the complaint filed in said proceeding in said police court of the city of Los Angeles on the 6th day of March, 1902, caused the arrest and detention of the said Thaddeus Lowe, F. A. Smith, M. Daly, R. Colahan, A. Burgess, W. B. Verner, F. Mullen, E. V. Glasgow, J. Ryan, J. Pelo, P. Hussey, R. J. Nieto, C. H. Tyler, W. Huff, T. A. Sealt, W. Bastock, W. Nolan, H. S. Malone, J. I. Alvarez, A. J. Shaw, M. Ortlip, J. Breslin, G. O'Dell, E. E. Miles upon a warrant issued by the judge of the said police court of the city of Los Angeles for the alleged violation of the said alleged ordinance.

And the said plaintiff further shows and alleges that the said City of Los Angeles, continuing to combine and confederate with the said James R. C. Burton, and with divers and sundry persons to this plaintiff unknown, threatens, in the name of the people of the State of California, to institute other proceedings in the police court of the city of Los Angeles against the employees of the said plaintiff and of the said contractors engaged in the erection of said gas works on the premises of the said plaintiff, and threatens to charge them and each of them with having committed other misdemeanors,
32 charging them and each of them with wilfully and unlawfully erecting or causing to be erected, maintaining or causing to be maintained, works, establishments or manufactories for the manufacture of gas, or tanks, reservoirs or receptacles for the storage of gas within the corporate limits of the city of Los Angeles, and outside of the limits described in said purported ordinance attempted to be passed by the said council of the city of Los Angeles on the 3rd day of March, 1902, as hereinbefore set forth; and the said City of Los Angeles threatens to cause the arrest and detention of said employees engaged in the erection of said gas works, and to imprison and confine them for alleged violations of the said city ordinance; and the

said City of Los Angeles threatens that if the said plaintiff continues to carry on her said work in which she is engaged in completing the said gas works and manufactory for the manufacture of gas, that it will arrest all persons employed and engaged in said work until it will have stopped the construction of said gas works and compelled the said plaintiff to desist from the erection thereof.

And the said plaintiff avers that unless the defendant, The City of Los Angeles, is restrained and enjoined by this court from executing its said threats, that the said City of Los Angeles will arrest and continue to arrest the men employed in the erection of said gas works on the premises of the said plaintiff until said work is stopped, and the said plaintiff is unable to complete the said undertakings entered into by her in the erection of said gas works aforesaid.

And the said plaintiff further shows and alleges that ever
33 since the inception of the said enterprise so instituted, commenced and undertaken by the said plaintiff the said defendant The City of Los Angeles and the municipal authorities thereof, its officers and agents, have continuously thrown obstacles in the way of the successful completion of the said enterprise of the said plaintiff, and have continuously and systematically attempted to thwart and frustrate the plans of the said plaintiff; and have interfered with and interrupted her said work in various portions thereof, that immediately after the organization, at the instance of and for the benefit of the said plaintiff of the said Valley Gas & Fuel Company, the said city council of the city of Los Angeles attempted to pass and adopt the ordinance number 6663, new series, which was adopted on the 26th day of August, 1901, as aforesaid, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles;" and afterwards, when the said plaintiff had purchased, within the district prescribed by the said ordinance last hereinbefore referred to, the land upon which she proposes to erect the said gas works, and when, on or about the 28th day of September, 1901, an application had been made to the board of fire commissioners of the city of Los Angeles for a permit to erect gas works upon said premises, the said city council considered and deliberated upon an ordinance then and there introduced in said city council of the city of Los Angeles, entitled "An ordinance amending ordi-
nance No. 6663, new series, entitled 'An ordinance prohibit-
34 ing the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26, 1901, by amending section 1 of said ordinance," the object of said ordinance being to further restrict the limits of the district in the city of Los Angeles in which it was lawful to erect and maintain gas works, by which said ordinance it was proposed to eliminate from the district theretofore described in the alleged ordinance adopted on the 26th of August, 1901, all that portion of said district lying between San Fernando street on the north and west, Sotello street and Leroy street on the south and west, and

the Los Angeles river on the east, in which was particularly situated the land owned and purchased by the said plaintiff as aforesaid, and upon which it was proposed by the said plaintiff to erect the said gas works; that such proceedings were had in the said city council of the city of Los Angeles on the presentation and consideration of said ordinance that the same was by the said city council referred to the committee on legislation of said city council, and thereupon the hearing upon the application theretofore made to the said board of fire commissioners was suspended, and the same continued entirely suspended by the said board of fire commissioners while the said matter was pending before the said committee on legislation of the said city council of the city of Los Angeles, and for upwards of two weeks; that during the time that said application for a permit to erect gas works upon the premises of the said plaintiff above referred to was still pending before the said board of fire commissioners as afore-
35 said, and while the question of the adoption of the said proposed ordinance was still pending before the said legislative committee of the said city council, the said board of fire commissioners were induced to consider and did consider and agree to the adoption of a certain rule and regulation in reference to applications for permits to erect gas works, which said rule and regulation is hereinafter referred to; that after such determination of the said board of fire commissioners to adopt said rule and regulation hereinafter referred to, said proposed ordinance proposing to restrict the limits of said district in which it was lawful to erect gas works as aforesaid came before the said city council of the city of Los Angeles on the report of the said legislative committee, the said legislative committee having reported against the adoption of the said ordinance; and thereupon, at the next meeting of the said board of fire commissioners of the city of Los Angeles the said rule and regulation hereinafter referred to, having theretofore been considered by the said board of fire commissioners as aforesaid, was, at the meeting of the board of fire commissioners on or about the 25th day of October, 1901, adopted in words and figures as follows: "Whereas, applications are on file with this board for permission to erect gas manufacturing plants at different points within the district to which said plants are limited; and, whereas, a very great majority of the property owners living in the vicinity of locations for which applications are made protest against the granting of permits; and, whereas, this board is satisfied that the respective
36 applicants for permission to build are attempting to engage in the business of the distribution of gas for general purposes, including its use for fuel and power, without first procuring a franchise from the city for said right; now, therefore, be it resolved, that all applications now pending before this board for permission to erect gas manufacturing plants are hereby denied; that hereafter, in all cases where an application for permission to erect a gas manufacturing plant shall be made to this commission, the said application shall state whether or not the gas so manufactured is to be

supplied to the inhabitants of the city of Los Angeles for illuminating purposes only. Said application shall be verified by the oath of the applicant, and in case it shall appear to the commission that no proper ground exists for the denial of the application, and that said gas is to be used for illuminating purposes only, the same shall be forthwith granted. But in case it shall appear that the gas is to be furnished for general purposes, such as fuel, power, etc., then the applicant therefor must procure a franchise from the city of Los Angeles to distribute gas before his said application will be finally granted by this commission," the effect of which rule was to dismiss and deny the application theretofore made for permission to erect gas works upon the premises of the said plaintiff as hereinbefore set forth; that afterwards, on the 1st day of November, 1901, the said plaintiff having complied with all the rules and regulations of the said board of fire commissioners, made an application on her own behalf for a permit to erect gas works upon said premises hereinbefore described, and afterwards, on the 22nd day of November, 1901, the said
37 board of fire commissioners granted the said permit to the said plaintiff as hereinbefore set forth, and thereupon the said city council of the city of Los Angeles, as soon thereafter as they met, to wit, on the 25th day of November, 1901, attempted to pass and adopt the ordinance No. 6779, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26, 1901, by amending section 1 of said ordinance," as hereinbefore set forth; that in addition to the acts of the said municipal authorities of the said city of Los Angeles hereinbefore set forth, on or about the 7th day of October, 1901, the said city council of the city of Los Angeles attempted to pass a certain other purported ordinance known as ordinance No. 6726, new series, entitled "An ordinance prohibiting the use of any public street or thoroughfare in the city of Los Angeles for the purpose of laying down or maintaining therein any pipe, conduit or connections therewith without a franchise," wherein and whereby the said city of Los Angeles attempted to ordain that it should be unlawful for any person, firm or corporation to lay down any pipe, conduit or connections therewith in any public street or thoroughfare in the city of Los Angeles for the purpose of supplying said city or its inhabitants with fresh water or with gas used exclusively for illumination or with other illuminating light, without first obtaining a permit from the superintendent of streets to make the necessary excavations therefor, and that
38 any person, firm or corporation desiring to obtain such permit should file with the superintendent of streets an application therefor in writing, setting forth the public streets or thoroughfares and the particular portions thereof which it was desired to excavate, the size and character of the excavations to be made, and specifically the purpose for which the pipe, conduit or connection therewith was to be used, whether for water, gas or electricity,

and if for gas or electricity that said gas or electricity was to be supplied solely to said city or its inhabitants to be used exclusively for illumination, and that said application must be verified by the oath of such person, or by the oath of a member of such firm or by the oath of the president and secretary of such corporation as the case may be; that thereafter, when the said plaintiff desired to make an application for permit to excavate the streets of the city of Los Angeles for the purpose of laying pipes in order to distribute to the citizens of the city of Los Angeles gas by her to be manufactured, for the purpose of supplying them with artificial light, the superintendent of streets of the city of Los Angeles unlawfully required of the said plaintiff an application therefor in writing, setting forth the public streets and thoroughfares, and the particular portions thereof, which it was desired by the said plaintiff to excavate, the size and character of the excavations to be made, and specifying the purpose for which the pipe, conduit or connections therewith was to be used, and that said gas was to be supplied solely for the city or its inhabitants to be used exclusively for illumination, and required that the said
39 application should be verified by the oath of the said plaintiff, all of which requirements were unlawful, and were for the purpose of annoying, harassing, impeding, hindering and delaying the said plaintiff in her attempt to carry out successfully the lawful enterprise in which she was engaged; that thereafter, in addition to the adoption of the said purported ordinance so attempted to be adopted by the city council of the city of Los Angeles, and in addition to the acts of the said superintendent of streets of the city of Los Angeles hereinbefore set forth, the said city of Los Angeles, through its city attorney, prosecuted the proceedings instituted by the said James R. C. Burton hereinbefore set forth for the arrest of and detention of the men employed in the construction and erection of the said gas works of the said plaintiff; and all of which acts and doings on the part of the city of Los Angeles, its municipal authorities, officers and agents as hereinbefore set forth the said plaintiff charges and avers were for the purpose of hindering, harassing, impeding, delaying and frustrating the efforts and attempts of the said plaintiff to carry out the lawful business and enterprise so undertaken by her as aforesaid, and were instituted and prosecuted for the purpose of compelling the said plaintiff to stop and abandon the further prosecution of said enterprise.

And the said plaintiff is informed and believes and upon such information and belief alleges that the said defendant The City of Los Angeles and the municipal authorities, officers and employees thereof were in their acts and doings hereinbefore set forth
40 wilfully and unlawfully instigated, advised and controlled by the officers, attorneys, agents and employees of the Los Angeles Lighting Company, a corporation organized under the laws of the State of California, engaged in the manufacture and supplying of gas in the city of Los Angeles, and which said company has for upwards of ten years last past, enjoyed a monopoly of the gas

business in the said city of Los Angeles; that said Los Angeles Lighting Company, through its officers, attorneys, agents and employees, has had sufficient influence with the municipal government of the city of Los Angeles, and with its officers, to bring about the passage and adoption of the alleged ordinances hereinbefore set forth, which the said city council of the city of Los Angeles has attempted to adopt since the commencement of the enterprise undertaken by the plaintiff, and has had sufficient influence with the officers and employees of the said city of Los Angeles to compel them to enforce and attempt to enforce the alleged ordinances so attempted to be passed and adopted by the city council of the city of Los Angeles as aforesaid against the said plaintiff, her agent, contractors and employees engaged in the erection of said gas works and the laying of pipes in the streets of the city of Los Angeles on behalf of the said plaintiff in enabling her to carry out the enterprise aforesaid; that all of said ordinances attempted to be passed and adopted by the city council of the city of Los Angeles restricting the limits of the city of Los Angeles in which it was lawful to erect gas
41 works as prescribed by the ordinance adopted by the city council of the city of Los Angeles on the 26th day of August, 1901, herein set forth, were prepared by the attorneys and agents of the said Los Angeles Lighting Company and by them presented to the members of the city council of the city of Los Angeles for adoption; that before the attempted adoption of the said alleged ordinance of the 25th day of November, 1901, hereinbefore set forth, the said Los Angeles Lighting Company, through its attorneys and agents, in order to comply with the rules and regulations of the said city council that before the passage of any ordinance a printed copy thereof should be furnished to each of the members of the city council of the said city of Los Angeles, caused to be printed and distributed to the members of the city council of the city of Los Angeles printed copies of the proposed ordinance, which the said city council afterwards, on the 25th day of November, 1901, attempted to adopt and pass as aforesaid; that the said street superintendent of the city of Los Angeles, under the restrictions purporting to be placed upon him by the city council of the city of Los Angeles by the attempted adoption of the alleged ordinance number 6726, new series, last herein referred to, being compelled to demand of the said plaintiff a verified application for a permit to open the streets of the city of Los Angeles for the purpose of laying pipes therein for the purpose of distributing gas by her to be manufactured, contrary to the rights of the said plaintiff to use the streets of the said city of Los
42 Angles for the purpose of laying pipes therein, as guaranteed to her by section 19, article XI, of the constitution of the State of California, that thereupon the said Los Angeles Lighting Company, its agents and employees, caused to be and had printed and caused to be delivered by its agents to the said superintendent of streets of the city of Los Angeles, printed blanks prepared by their attorneys for applications for permits to excavate in public streets of the city of Los Angeles, a copy of which blank is hereto attached

and marked Exhibit A, and made a part hereof as though hereinafter specifically set forth, reference thereunto being had; that the said Los Angeles Lighting Company, its officers and agents, combining and confederating with the said James R. C. Burton and with divers and sundry persons to the said plaintiff unknown, have compelled the city attorney of the city of Los Angeles and his deputies and assistants to prepare the complaints in the proceedings instituted by the said James R. C. Burton in the name of the people of the State of California against the employees of the said plaintiff and her said contractors engaged in the erection of the said gas works as hereinbefore set forth, and have induced the filing of said complaints and the issuance of the warrants thereon and the arrest and imprisonment and detention by the officers of the city of Los Angeles of the said employees; and that the said Los Angeles Lighting Company, by its officers, attorneys, agents and employees, has boasted and threatened that if the said prosecutions so instituted by the said James R. C. Burton against the employees of the said plaintiff and her contractors shall fail, and if the said ordi-
43 nances hereinbefore set forth shall be declared void and invalid, they will, by their influence and their efforts, secure the passage by the city council of the city of Los Angeles of an ordinance regulating the gas business in the city of Los Angeles and requiring the payment of a license, which license they have boasted and threatened shall be prohibitory in its nature and so high as to prevent the said plaintiff from carrying on the business of manufacturing and distributing gas within the city of Los Angeles.

And plaintiff further alleges that each and every of the acts aforesaid so performed by the city of Los Angeles, its officers, agents and employees, were done and performed, not for the purpose of protecting any public interest or preserving any public right, but that said acts and each of them were suggested and formulated by the said Los Angeles Lighting Company, its officers, attorneys, agents and employees, solely for the purpose of protecting the said Los Angeles Lighting Company in the enjoyment of that monopoly which has continued for upwards of ten years, as hereinbefore alleged, and for the purpose of depriving the plaintiff of vested rights in property and of the privilege of pursuing her lawful undertaking and enterprise as the same is hereinbefore specifically set forth, in the exercise of which rights and privileges she is protected by the provisions of the constitution of the State of California and the Constitution of the United States.

And the said plaintiff further shows and alleges that the said territory surrounding the premises of the said plaintiff hereinbefore described, in which the said gas works of the said plaintiff are
44 being erected, and which was by ordinance No. 6663, new series, hereinbefore set forth, a portion of the territory within which the city of Los Angeles permitted the maintenance of gas works, is and was a district devoted to manufacturing and commercial enterprises almost exclusively; that in said district, prior to the purchase of the property herein described by the plaintiff and upon

which the said gas works are being erected for this plaintiff as aforesaid, there was in operation a soap factory; that at all times since the 1st day of August, 1901, there has been and is now maintained within the district bounded by Redondo and Alhambra streets, the Los Angeles river and San Fernando street, in said city of Los Angeles, one wool-pulling factory, which is directly across North Main street from the said premises of the said plaintiff, three wineries, numerous oil wells in operation, an extensive iron foundry in active operation, a brass foundry, and an extensive oil refinery; and that there is a great deal of vacant and unoccupied land which is and will continue to be comparatively worthless except for the purposes of the erection thereon of manufacturing establishments; that immediately adjacent to the easterly line of said district last herein described are the tracks of the Southern California railway, on which are operated the freight and passenger trains of the Santa Fe railroad; that east of that and adjacent thereto is the Los Angeles river, and that east thereof is the right-of-way and tracks of the San Pedro, Los Angeles and Salt Lake railroad; that immediately east of those tracks an extensive tannery is located and in operation; that immediately north of said district and north of San Fernando street,
45 and adjacent to the tracks of the Santa Fe railroad are the oil tanks and refinery of the Standard Oil Company in extensive operation; that prior to the granting of the permit by the board of fire commissioners of the city of Los Angeles to the said plaintiff on the 22nd day of November, 1901, the said board of fire commissioners and the members of said commission individually and jointly visited and examined the said premises and the said district surrounding the same, and having heard the protests of all persons who appeared before them, decided and determined by the granting of said permit that said premises were in all respects a suitable place upon which to erect the said gas works and to conduct the business of manufacturing gas.

And the said plaintiff alleges that said gas works are being constructed and are to be completed upon concrete foundations, with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible, and that the same are so firmly and substantially constructed that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most approved pattern, and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said plaintiff by the use of the said devices and improvements and the said machinery therein contained, so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way
46 with the health, comfort, safety or welfare of the inhabitants of the said district and territory in which the said gas works are located upon the premises of the suid plaintiff as hereinbefore described, or of any other of the inhabitants of the said city of Los Angeles.

And the said plaintiff avers and alleges that if the said city of Los Angeles, its officers and employees shall be allowed to arrest and to continue to arrest the employees and servants of the said plaintiff and her contractors so engaged in the completing and erection of said gas works, or in the operation and maintenance thereof when completed, and the said defendant is allowed to carry its said threats into execution, the said plaintiff will be deprived of the rights of property she has already acquired and she will suffer great and irreparable loss; that already, by the acts of the said defendant in hindering and delaying the said plaintiff in manner as hereinbefore set forth, in the erection of said gas works and carrying out the enterprise contemplated by her of manufacturing, distributing and selling gas, the said plaintiff has suffered damages of upwards of the sum of twenty-five thousand dollars ($25,000) in the loss of profits which would otherwise have accrued to her therefrom, that if by said acts and threatened acts of the said defendant the said plaintiff and her contractors are compelled to desist and cease the completion of said gas works, the said works partially completed as hereinbefore set forth and in their uncompleted condition, and the said materials consisting of steel plates, iron, etc., lying unprotected and uncovered upon the premises aforesaid, are

47 and will be exposed to the action of the elements and will be thereby greatly damaged and impaired in value and in imminent danger of complete destruction; that in the erection of said gas works, in the laying of pipe for the distribution of gas therefrom, and in the purchase of other materials to enable the said plaintiff to complete and carry out the said enterprise undertaken by her as aforesaid, the said plaintiff has already paid, laid out and expended upwards of the sum of fifty thousand dollars, over and above the cost of the premises hereinbefore described, and if the defendant is allowed to carry out its said threats the said amount so paid, laid out and expended by the said plaintiff will become and be almost a total loss to said plaintiff; that in the erection and construction of said gas works skilled mechanics are necessary, and the same have been brought from divers and sundry places, from great distance from the city of Los Angeles, to-wit, from Trenton in the State of New Jersey, Philadelphia in the State of Pennsylvania, Toledo in the State of Ohio, San Francisco in the State of California, and other places, and if said City of Los Angeles is allowed to execute its said threats and arrest the said men, said men threaten to and will leave the employ of the said plaintiff and her said contractors, and if said work shall be retarded and interrupted by reason of said threats and execution thereof by said City of Los Angeles, as it will be if said threats are executed, the said skilled laborers and mechanics so employed by the said plaintiff and her said contractors will become scattered and it will be impos-

48 sible to again obtain the services of said men or the services of like men in such employment; that if said defendant The City of Los Angeles is allowed to carry out the said threats the said employees of the said plaintiff and her said contractors will

be subjected daily to arrests for alleged violation of the alleged ordinances, and even though the said employees should successfully defend such prosecutions, said city threatens and said plaintiff verily believes it will continue to harass said plaintiff and said employees by repeated arrests for alleged violations of the said purported ordinances which plaintiff alleges to be invalid, and further, that pending the final determination of the validity of said alleged ordinances by the successful completeness of the defenses interposed against said prosecutions, the said plaintiff will be subjected to great expense, inconvenience and embarrassment, and all without any possible redress or adequate remedy at law, to the manifest injury and irreparable loss of the said plaintiff.

Wherefore, the plaintiff prays judgment:

First. That the said contract entered into between the said plaintiff and the City of Los Angeles by virtue of the permit granted to her on the 22nd day of November, 1901, be declared and determined to be a valid and existing contract between the City of Los Angeles and the said plaintiff, and that all alleged ordinances attempted to be passed by the city council of the city of Los Angeles in contravention thereof or in violation of the terms thereof be declared null and void as against the rights of the said plaintiff.

Second. That the said defendant The City of Los Angeles, its counsellors, attorneys, solicitors, officers, agents and em-
49 ployees, and all persons combining and confederating with it and each and every of them be enjoined and restrained from enforcing the said alleged ordinance No. 6779, new series, attempted to be adopted the 25th day of November, 1901, and entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26, 1901, by amending section 1 of said ordinance," or enforcing the said alleged ordinance No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26, 1901, by amending section 1 of said ordinance," against the said plaintiff or any of her agents, contractors, servants or employees, and from prosecuting or proceeding with any prosecutions commenced or to be commenced against the said plaintiff or any of her agents, contractors, servants or employees, or the employees of any of them, heretofore engaged, now engaged or that may hereafter be engaged in the erection of the said gas works upon the premises of plaintiff described in this complaint.

Third. That the said defendant, its counsellors, attorneys, solicitors, officers, agents and employees, and all persons combining and confederating with it and each and every of them, be enjoined and restrained from in any manner hindering, delaying, interfering with, obstructing or preventing the said plaintiff from carrying out
50 her said enterprise in erecting the said gas works upon the premises of the said plaintiff situate in the city of Los Angeles

and State of California as hereinbefore described, and that they further be enjoined from in any way interfering with the operation or maintenance or management of the said gas works of the said plaintiff;

Fourth. That plaintiff may have such other and further relief as the nature and circumstances of her case may require and as to this court may seem meet, and that plaintiff may have and recover her costs and disbursements in this action incurred.

LEE, SCOTT, BAILEY & CHASE,
LYNN HELM,
Attorneys for Plaintiff.

Duly verified.

EXHIBIT "A."

Application for Permit to Excavate in Public Streets.

(Ordinance No. 6726, new series.)

LOS ANGELES, CAL., ——, 190–.

To the street superintendent of the city of Los Angeles:

—— —— hereby applies for a permit to excavate in the following-named streets and portions of streets in the city of Los Angeles —— for the purpose of laying down therein —— and said applicant states that the size and character of the excavation to be
51 made, as aforesaid, is as follows: —— and that said —— is to be used for* ——.

—— ——, *Applicant.*

*State whether for water, gas, or electricity, and if for gas or electricity, that the same is to be supplied solely to said city or its inhabitants to be used exclusively for illumination.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

—— —— being first duly sworn, says: That he is —— the applicant above named, and that the statements made in the foregoing application are true.

—— ——.

Subscribed and sworn to before me this — day of —— 190–.

—— ——,
Notary Public in and for the County of Los Angeles, State of California.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

—— —— being first duly sworn, says: That he is —— the applicant above named, and that the statements made in the foregoing application are true.

—— ——.

Subscribed and sworn to before me this — day of —— 190–.

—— ——,

Notary Public in and for the County of Los Angeles, State of California.

Endorsed: Filed Mar. 10, 1902. C. W. Bell, clerk; by C. G. Keyes, deputy.

(Title of Court and Cause.)

Demurrer.

Comes now The City of Los Angeles, defendant in the above entitled action, and demurring to the complaint in said action, says:

52 That said complaint does not state facts sufficient to constitute a cause of action.

That the court has no jurisdiction of the person of the defendant, or the subject of the action.

W. B. MATHEWS,
City Attorney and Attorney for Defendant.

Los Angeles, March 14th, 1902.

Endorsed: Received copy of the within this 14 day of March, 1902. L. Helm, Lee, Scott, Bailey & Chase.
Filed Mar. 14, 1902. C. W. Bell, clerk; by W. L. Warren, deputy.

APRIL 1, 1902.

Demurrer sustained.
Attest:

C. W. BELL, *Clerk.*
By W. L. WARREN, *Deputy.*

Minutes Superior Court, Dept. 2.

FRIDAY, *April 11th*, 1902.

Minute Order.

(Title of Cause.)

Motion to strike out portions of complaint denied. Motion of defendant to dissolve restraining order granted. Demurrer to complaint sustained. It is therefore ordered by the court that the motion of the defendant to strike out parts of the complaint herein be denied; that, the restraining order hereinbefore made, be vacated

and dissolved, and that the demurrer of the defendant to the complaint herein be sustained, and that judgment be entered herein in favor of defendant on the demurrer and for costs.

(Title of Court and Cause.)

Judgment.

This cause coming on regularly for hearing upon the complaint filed herein and the demurrer filed thereto, Lynn Helm, Esq., and Messrs. Lee, Scott, Bailey & Chase appearing as counsel for the plaintiff, and W. B. Mathews, Esq., Messrs. Davis & Rush and W. R. Bacon, Esq., appearing as counsel for the defendant, the court having heard the argument of counsel, on the 11th day of
53 April, A. D. 1902, sustained the said demurrer, and ordered that judgment be had for the said defendant and for costs.

Wherefore, by reason of the law and the order of the said court, it is ordered, adjudged and decreed that the said plaintiff take nothing by said action, and that the said defendant do have and recover of the said plaintiff its costs and disbursements incurred in said action, amounting to the sum of $—.

Judgment entered September 22nd, 1902.

Filed Sep. 22, 1902. C. W. Bell, clerk; by C. G. Keyes, deputy. Docketed, Sep. 23, 1902; entered, Sep. 23, 1902; Book 105, page 190. By D. S. Burson, Jr., deputy clerk.

(Title of Court and Cause.)

Notice of Appeal.

To the clerk of said superior court, and to W. B. Mathews, Esq., attorney for said defendant:

Please take notice, that the plaintiff in the above entitled action hereby appeals to the supreme court of this State from the judgment therein made and entered in said superior court on the 22nd day of September, 1902, in favor of the said defendant in said action and against the said plaintiff, and from the whole thereof; said judgment being entered pursuant to an order of court entered in said case sustaining the demurrer to the complaint April 11th, 1902.

Dated September 22nd, 1902.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Attorneys for Plaintiff.

54 Copy of above notice received and service acknowledged this 22nd day of September, 1902, and an undertaking on appeal is hereby waived.

W. B. MATHEWS,
Attorney for said Defendant.

Endorsed: Filed Sep. 22, 1902. C. W. Bell, clerk; by C. G. Keyes, deputy.

Clerk's Certificate.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

I, C. W. Bell, county clerk and *ex-officio* clerk of the superior court in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in the above entitled action now on file in my office, and that the same contains a full, true and correct transcript of the records on the appeal from the judgment in the case of Caroline W. Dobbins, plaintiff *vs.* The City of Los Angeles a municipal corporation, defendant, consisting of the complaint, demurrer, judgment and notice of appeal.

I further certify that an undertaking on appeal from the judgment, in due form, has been properly filed in time by the plaintiff, in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said superior court, this — day of Oct. 1902.

C. W. BELL, *Clerk*,
By —— ——, *Deputy*.

55 (Title of Court and Cause.)

Stipulation.

It is hereby stipulated and agreed by and between the respective counsel for plaintiff and defendant in the above entitled action that the foregoing is a full, true and correct transcript of the records on appeal from the judgment therein, and that the same contains full, true and correct copies of the complaint, demurrer, judgment and notice of appeal, and that the said appeal from the said judgment may be taken, heard and determined on the foregoing transcript.

And it is further stipulated, that an undertaking on appeal from the judgment, in due form, has been properly filed in time according to law.

Dated this 13 day of Oct., 1902.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Attorneys for Plaintiff and Appellant.
W. B. MATHEWS,
DAVIS & RUSH,
W. R. BACON,
Attorney- for Defendant and Respondent.

56 Received copy of the within for the judge who tried the case this 20 day of Oct., A. D., 1902.

C. W. BELL,
County Clerk,
By D. S. BURSON, JR.,
Deputy Clerk.

Due service of the within, and receipt of a copy hereof, is hereby admitted this 20 day of Oct., A. D., 1902.

W. B. MATHEWS,
DAVIS & RUSH, &
W. R. BACON,
Attorney for Respondent.

57 In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
vs.
CITY OF LOS ANGELES, Defendant and Respondent.
} L. A., No. 1330. Stipulation.

It is hereby stipulated, between the parties in the above entitled cause, by their respective attorneys, that an order may be entered in said cause in said supreme court, advancing said cause, and that the said case when so advanced may be submitted upon briefs filed in said cause, and in considering and deciding the same, the court may consider the briefs on file in the case of *Ex parte* Martin Daly on *habeas corpus*, criminal number 930. said case to be submitted on the third day of February 1903, at the time of the resubmission of the case of *Ex parte* Daly aforesaid.

And it is further stipulated that the appellant may within ten (10) days after such submission, file a reply brief in said cause.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Attorneys for Plaintiff and Appellant.
W. B. MATHEWS,
Attorney for Defendant and Respondent.

Granted by the court.

Endorsed: Filed Feb. 7 1903. Frank C. Jordan clerk by J. C. Crooks deputy.

58 By the COURT: The within entitled cause is hereby submitted in accordance with the stipulation of the parties to be considered in conjunction with the case of *Ex parte* Daly Cr. 930.

BEATTY, *C. J.*

Feb'y 7 1903.

Endorsed: L. A. 1330 Caroline Dobbins *vs.* City of Los Angeles. Stipulation. Filed Feb. 7 1903. Frank C. Jordan clerk by J. C. Crooks deputy.

59 Endorsed: Filed May 29–1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy.

(Opinion in the case of Caroline W. Dobbins *v.* City of Los Angeles, above referred to, is as follows:)

In Bank.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
vs.
CITY OF LOS ANGELES, Defendant and Respondent.
} L. A., No. 1330.

This action was brought to obtain an injunction restraining the defendant, The City of Los Angeles, a municipal corporation, from enforcing certain ordinances of the city prohibiting the erection or maintenance of gas works within certain parts of said city. A demurrer to the complaint was sustained in the court below and judgment rendered for defendant. From the judgment plaintiff appeals.

On the 26th day of August, 1901, the city adopted an ordinance, No. 6663, by which it was provided that "it shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment, or manufactory, for the manufacture of gas; or any tank, reservoir, or other receptacle for the storage of gas, within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit" (and then follows a description of the district). It was also provided that any person who should violate the above provision should be guilty of a misdemeanor, and upon conviction be punished by fine or imprison-
60 ment or both. On the 3rd day of March, 1902, the city adopted another ordinance No. 7029, amendatory of the said ordinance 6663. This second ordinanee merely amends the first by changing the boundaries of the area within which, the erection and maintenance of gas works was prohibited. These two ordinances are the only ones necessary to be considered. The plaintiff was engaged in erecting gas works within the territory in which the erection of such works was prohibited by the second ordinance and it is averred that, by procurement of the defendant, certain employees of plaintiff engaged in labor upon her said gas works have been arrested and prosecuted for a violation of said ordinance, and that defendant threatens to continue to arrest and prosecute her employees for such violation. The prayer of the complaint is that defendant be enjoined and restrained from enforcing said ordinances and from "prosecuting or proceebibg with any prosecution commenced or to be commenced" under said ordinances against plaintiff or any of her agents or employees. There are other averrments in the complaint which will be noticed hereafter.

The general contention of appellant that the ordinances in question are invalid and void because violative of the 14th amendment to the Federal Constitution, and of other constitutional guarenties State and Federal of the enjoyment of property, or vested rights, the equal protection of the law, etc., is not maintainable.

The ordinances were passed in the exercise of the police power which is fully granted to the city of Los Angeles by statutory law, by its charter, and by the constitution of the State. Its charter gives it power to suppress or prohibit all offensive places of business, and to regulate or prohibit explosives, combustibles, or inflammable material within the city, or any specified part thereof.

61 By the act of the State legislature of April 4, 1870, entitled "An act concerning gas works," (Stats. of 1869–70 p. 815) it is provided that cities "may also control the location and construction of works so that they may be erected on suitable localities to give the least discomfort or annoyance to the public." This act was expressly continued in force by subdivision 20 of section 19 of the political code. And by the State constitution, itself, (art. XI, sec. 11) it is provided that "any county, city, town or township may make and enforce within its limits all such local, police, sanitary or other regulations, as are not in conflict with general laws." There is no doubt therefore, that the exercise of this police power belongs to the respondent within its territorial limits; and the only question is whether the adoption of the ordinances in question was a legitimate exercise of it; for all property is held subject to that power. An ordinance obviously and undoubtedly foreign to any of the recognized purposes of the police power, and interfering with the ordinary enjoyment of the property would, no doubt, be held by a court to be invalid. But where the ordinance is reasonably within a proper consideration of, and care for, *and* public health, safety, or comfort, a court will not disturb the legislative act; it will not substitute its own views of what is proper in the premises for those of the legislative body. In Munn *v.* Illinois, 94 U. S. 113, the U. S. Supreme Court states the rule thus: If no state of circumstances could exist to justify a certain statute, then we may declare this one void because in excess of the legislative power of this State; but if it could, we must presume it did. Of the propriety of legislative interference, within the scope of the legislative power,

62 the legislature is the exclusive judge." This rule is very fully discussed and declared in Powell *v.* Commonwealth of Penn. 127 U. S. 617—the "oleomargarine" case. (See also Crowley *v.* Christianson, 137 U. S. 87, and Canfield *v.* United States, 167 U. S. 518). And it cannot be said judicially that volatile, inflammable, explosive, and bad smelling gas, is not within the category of things which interfere with the public safety, welfare and comfort, and therefore beyond the reach of the police power. The exercise of this power is not confined to the regulation of only such interferences with the public welfare and comfort as come strictly within the common law definition of a "nuisance." (*Ex parte* Lacey, 108 Cal. 326; *Ex parte* Schrader, 33 Cal. 283).

It is averred in the complaint that the said ordinances were adopted, not for the purpose of protecting public interests, but for the purpose of protecting and favoring a certain named company engaged in the manufacture and sale of gas in said city. But the motives which induce a legislative body to make a law cannot be

considered in a judicial proceeding in which the validity of the law in question is involved. In Cooley's Constitutional Limitations sixth edition, p. 231, it is said: "Although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the legislature where fraud and corruption were alleged, and annul their action if the allegation were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the governor in the exercise of the discretion vested in him ex-
63 clusively. He is responsible for his acts in such a case, not to the courts, but to the people;" and numerous authorities are referred to which sustain the text. (See also Hing *vs.* Crowley, 113 U. S. 703.)

It is also averred that prior to the adoption of the second ordinance plaintiff had made certain contracts with third parties to furnish materials for and do labor on gas works which she was about to erect, and had purchased land to be used as a site for such works within the territory where the erection of such works, under the first ordinance was permitted, and had expended a considerable amount of money in building the foundation of her contemplated works, and in partly erecting the same; and that by the second ordinance the boundaries of the excepted district were so changed as to put her said land outside of the territory where gas works were permitted. And it is further alleged that prior to the adoption of the second ordinance she had commenced to erect her works under a permit of the board of fire commissioners of said city in pursuance of the fire and building ordinances. And she contends, that even if the general principle relied on is not maintainable, these additional facts make the second ordinance invalid as an unwarranted interference with the enjoyment of property, an impairment of the obligations of contracts, etc. But this contention cannot be maintained. The ordinance provides that "it shall be unlawful for any person to erect or maintain" gas works outside of the described district. This language clearly includes works in course of construction as well as those to be begun in the future; and under the authorities the exercise of the police power clearly covers
64 prohibited buildings partly erected, although great hardship to the builder may follow. It is somewhat difficult to see exactly what is the character and significance of the alleged permit from the fire commissioners. Appellant contends that it was an express contract with the city to allow her to erect and maintain her gas works. We do not think that this conclusion results from the averments of the complaint. At all events there was nothing in this permit which took away from the city the police power which it afterward exercised. The city could not thus estop itself from making and enforcing proper police regulations. In Fertilizing Co. *v.* Hyde Park, 97 U. S. 659, the legislature of the State had granted to plaintiff the privilege of manufacturing fertilizers in the village of Hyde Park and conveying the products through its streets, and

plaintiff had expended $200,000 in constructing its plant; but it was held that notwithstanding these facts the village, by virtue of its police power, could prohibit the business and compel the plaintiff to abandon its works. In New Orleans Gas Co. *v.* Louisiana Light Co. 115 U. S. 672, the court say: "Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety, in the same sense, and to the same extent, as are all contracts and all property, whether owned by natural persons or corporations. Whatever therefore in the manufacture or distribution of gas in the city of New Orleans proves to be injurious to the public health, the public comfort, or the public safety, may notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by
65 municipal ordinance passed under legislative authority." (See also Barbour *v.* Connelly, 113 U. S. 27; Stone *v.* Miss. 101 U. S. 814; Butchers' Union Co. *v.* Crescent City Co. 111 U. S. 750; *Ex parte* Lacey 108 Cal. 326.)

Our conclusion is that the ordinances here involved are valid and that therefore the judgment should be affirmed. This view makes it unnecessary to consider the question elaborately discussed by counsel, towit, whether or not a court of equity will ever enjoin a criminal prosecution.

The judgment appealed from is affirmed.

McFARLAND, *J.*

We concur:
SHAW, *J.*
ANGELLOTTI, *J.*
LORIGAN, *J.*
HENSHAW, *J.*

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
vs.
CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Respondent. } No. 1330.

On appeal from the superior court of the county of Los Angeles.

I Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the foregoing and annexed is
66 a true and correct copy of the opinion filed May 29th, 1903, in the above entitled cause, as shown by the records in my office.

Witness my hand and the seal of the court this 23rd day of July, A. D. 1903.

[Seal Supreme Court, State of California.]

FRANK C. JORDAN, *Clerk*,
By J. C. CROOKS, *Deputy*.

Endorsed: Filed: May 29th, 1903. Frank C. Jordan, clerk. By J. C. Crooks, deputy clerk.

67 In the Supreme Court of the State of California.

DOBBINS
vs.
CITY OF LOS ANGELES. } In Bank. L. A., No. 1330.

By the COURT: Rehearing denied, June 27, 1903, Beatty, C. J., Lorigan, J., Henshaw, J., dissenting; Vandyke, J., declining to act.

Endorsed: Filed Jun- 29 1903. Frank C. Jordan clerk by R. D. Duke deputy.

68 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Plaintiff in Error,
vs.
CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Defendant in Error, }

To the Hon. William H. Beatty, chief justice of the supreme court of the State of California:

The petition of Caroline W. Dobbins respectfully shows that at all times hereinafter mentioned, the said defendant in error, The City of Los Angeles, is and was a municipal corporation duly organized under the laws of the State of California, and situate in the county of Los Angeles, in said State of California. That on or about the first day of August, 1901, the said plaintiff in error, contemplating the erection of gas works for the purpose of the manufacture, recovery, storage and distribution of gas for the purpose of supplying the inhabitants of the city of Los Angeles and inhabitants of cities neighboring and adjacent thereto, caused to be organized a corporation known as the Valley Gas and Fuel Company and the said Valley Gas and Fuel Company, was, at the instance of the said plaintiff in error, on or about the 8th day of August, 1901, duly organized under and by virtue of the laws of the State of California.

That after the organization of the said Valley Gas and Fuel Company, and on or about the 1st day of September, 1901, the plaintiff in error made and entered into a certain contract with the
69 said Valley Gas and Fuel Company to build, construct and erect for her on certain premises to be designated by her and as hereinafter described, certain gas works, including coke ovens and all things necessary for the manufacture, recovery, storage and distribution of gas, said gas works in themselves consisting of gas generators, gas washers, and scrubbers, purifier and gas holder and

tank, the same to be all complete and to be delivered to the said plaintiff in error on or before the 1st day of January, 1902.

That after the making of the said contract between the said plaintiff in error and the said Valley Gas and Fuel Company to erect and construct said works, the said plaintiff in error took such steps as were necessary to carry out her intentions as hereinbefore set forth, and the said Valley Gas and Fuel Company entered into divers and sundry contracts with divers and sundry persons to do the work necessary in the erection of said coke ovens and gas works.

That on or about the 26th day of August, 1901, the city council of the said city of Los Angeles, passed an ordinance known as ordinance No. 6663 (new series), entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," which ordinance was on the 26th day of August, 1901, approved by the mayor of the city of Los Angeles and duly published in the official paper of the said city of Los Angeles, which said ordinance is in words and figures as follows, to-wit:

70 Ordinance No. 6663 (new series).

An ordinance prohibiting the erection or maintenance of gas-works, gas tanks or reservoirs within certain portions of the city of Los Angeles.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of

First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the city jail for not less than thirty (30) days nor more than one hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this ordinance, shall be deemed a separate offense within the meaning of this ordinance.

SECTION 3. Ordinance No. 174 approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. The city clerk shall certify to the passage of this ordinance and cause the same to be published once in the Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of August 26th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of August, 1901.

M. P. SNYDER, *Mayor.*

71 That thereafter, within the territory of the said city of Los Angeles within which by said ordinance last hereinbefore set forth it was lawful to erect or maintain gas works, gas tanks or reservoirs for the manufacture of gas, and on or about the 28th day of September, A. D. 1901, the said plaintiff in error, Caroline W. Dobbins, for the purpose of erecting gas works contemplated by her as aforesaid, purchased the following described premises situate in the city of Los Angeles and State of California, to-wit:

Part of lot fifteen, and all of lots sixteen, seventeen and eighteen, of block two, Pomeroy and Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199, miscellaneous records of said Los Angeles county.

Afterwards, and on or about the first day of November, A. D. 1901, the said plaintiff in error, Caroline W. Dobbins, pursuant to an ordinance of the city of Los Angeles known as ordinance No. 6108, adopted by the city council of the city of Los Angeles Decem-

ber 28th, 1899, and known as the "building ordinance," made application for the purpose of manufacturing, recovering and distributing gas, to the board of fire commissioners of the city of Los Angeles, a board authorized by the city charter of the city of Los Angeles, for a permit to erect gas works upon the premises hereinbefore described, for the manufacture, recovery and storage of gas, which said premises were within the limits described by said ordinance passed by the said council of the city of Los Angeles on the 26th day of August, 1901 aforesaid, in which it should be lawful to erect and maintain works for the manufacture of gas, the said gas so manufactured at said
72 works to be supplied to the inhabitants of the city of Los Angeles. That afterwards, on the 22nd day of November, 1901, upon the said application of the said plaintiff in error, Caroline W. Dobbins, for permission to erect and maintain said gas works, the said application was by the said board of fire commissioners duly granted and allowed. And thereupon, on the said 22nd day of November, 1901, the said plaintiff in error, Caroline W. Dobbins, gave directions to the said Valley Gas and Fuel Company to proceed to carry out its contract with her, and directed that said Valley Gas and Fuel Company erect the said gas works and coke ovens upon the premises of the said plaintiff in error hereinbefore described, and to commence work thereon at once. That immediately, and on the said 22nd day of November, 1901, pursuant to the directions of the said plaintiff, the said Valley Gas and Fuel Company entered into divers and sundry contracts with divers and sundry persons for the erection of certain portions of said gas works and coke ovens, and commenced the laying of the cement foundations for the water tank, gas holder, scrubbers and generator, which were to be erected thereon pursuant to the contract between the said Valley Gas and Fuel Company and the said plaintiff in error, for the benefit of the said plaintiff in error. That said foundations were laid at a cost of upwards of $2500.00, and were of great strength and very costly material, and that if the same should have to be destroyed or removed, it would cause irreperable injury and damage to the plaintiff in error, as the same were the foundations of all the work constructed by the Valley Gas and Fuel Company for the said plaintiff in error, as hereinafter specifically described.

73 That since the granting of the said permit to the said plaintiff in error by the said board of fire commissioners, the said plaintiff in error, through the said Valley Gas and Fuel Company by reason of the contract aforesaid, for the erection of said gas works, and on her behalf, and until the commission of the acts of the said defendant in error hereinafter set forth, was peaceably and lawfully engaged in the erection of the said gas works upon the premises of the said plaintiff in error hereinbefore specifically described, and there was erecting for the said plaintiff in error upon the said premises complete the said gas generator and the scrubbers and washers used in the manufacture of gas. That the water tank and gas holder had been commenced upon the foundations prepared for it and was being erected by one Davis & Farnum Manufacturing Com-

pany, a corporation organized under and by virtue of the laws of the State of Massachusetts, engaged in the business of manufacturing gas holders and gas tanks, under a contract with the said Valley Gas & Fu*le* Company for the said plaintiff in error. That said gas holder was of steel and to have a capacity of one hundred thousand cubic feet of gas, and when completed would cost the sum of $13,685. That all the steel and iron used in its construction were ready to be put in place and that within six weeks from the time of the filing of the complaint herein, would have been finished but for the acts of the said defendant in error, The City of Los Angeles.

That in the erection of said gas works and in the laying of pipe for the distribution of gas therefrom, and in the purchase of other material to enable the said plaintiff in error to complete and
74 carry out the said enterprise undertaken by her as aforesaid, the said plaintiff in error at the time of the filing of the original complaint in the superior court of the county of Los Angeles hereinafter mentioned, had already paid, laid out and expended upwards of the sum of $50,000 over and above the cost of the premises hereinbefore described.

That afterwards, on the 3rd day of March, 1902, the city council of the city of Los Angeles attempted to pass and adopt an ordinance entitled "An ordinance amending ordinance number 6663, new series, entitled, 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," which said purported ordinance is in words and figures as follows:

Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed

of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

75 That said ordinance last hereinbefore set forth was on the 3rd day of March, 1902, approved by the mayor of the city of Los Angeles and was afterwards, on the 5th day of March, 1902, published in the Los Angeles Journal, as in and by said alleged ordinance it was provided.

And your petitioner further shows that notwithstanding said

ordinance she endeavored in all respects, as she lawfully might, to erect and have erected upon the said premises hereinbefore described, the said gas works, but while the men in the employ of the said plaintiff in error and of the said subcontractors by her engaged in the contracts aforesaid, were engaged in the erection of said gas works, the City of Los Angeles on the 6th day of March, 1902, attempted to enforce said ordinance by arresting the employés engaged in the erection of said gas works upon the premises aforesaid, upon warrant issued by the police court of the city of Los Angeles for the alleged violation of said ordinance herein last set forth.

And your petitioner further shows that thereupon, on the 10th day of March, 1902, the said plaintiff in error, being still the owner of the premises aforesaid, and of the gas works erected and partially erected thereon, and desirous of carrying out her said undertaking, commenced an action in the superior court of the State of California, in and for the county of Los Angeles, against the said City of Los Angeles, wherein, in the complaint filed therein, your petitioner set forth the facts hereinbefore set forth, and sought to have declared and determined that the permit to the said plaintiff in error on the 22nd day of November, 1901, by the board of fire commissioners of the city of Los Angeles was a valid and
76 existing contract between the said defendant in error, The City of Los Angeles, and the said plaintiff in error, and that all ordinances attempted to be passed by the city council of the city of Los Angeles in controvention or in violation of the terms thereof, should be declared to be null and void as against the rights of the said plaintiff in error, and that the said City of Los Angeles should be enjoined and restrained from enforcing the said ordinance No. 7029 (new series) entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works or gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance" against the said plaintiff in error or against any of her agents, contractors, servants or employés, and from prosecuting and proceeding with any prosecutions commenced or to be commenced against the said plaintiff in error, or any of her agents, contractors, servants or employés, or the employés of any of them theretofore engaged or thereafter to be engaged in the erection of said gas works upon the premises of the plaintiff in error, described in the complaint, and that the said defendant in error be enjoined and restrained from in any manner hindering, delaying or interferring with, obstructing or preventing the said plaintiff in error from carrying out her said enterprise in erecting the said gas works upon the premises of the said plaintiff in error, situate in the said city of Los Angeles and State of California, as hereinfore described, and that they further be enjoined from in any way interferring with the operation or maintenance or management
77 of the said gas works of the said plaintiff in error, and for such other and further relief as the nature and circumstances of the case of the said plaintiff in error might require.

And such proceedings were had in the said action, *and* thereafter upon demurrer to the said complaint, interposed by the said defendant in error, The City of Los Angeles, on the 22nd day of September, 1902, a judgment was duly given and made in said cause whereby it was adjudged and decreed that the said plaintiff take nothing by said action and that the said defendant do have and recover of said plaintiff its costs and disbursements incurred in said action.

And your petitioner further shows that said petitioner did in said suit brought by her for the purpose aforesaid, to-wit: to enjoin and restrain the City of Los Angeles from enforcing the ordinance No. 7029, new series, attempted to be adopted by the city council of the city of Los Angeles on the 3rd day of March, 1903, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," claim and contend that said purported ordinance so adopted by the city council of the city of Los Angeles on the 3rd day of March, 1903, was, as to the rights of the said plaintiff in error acquired by her purchase of the land within the district described in the ordinance of August 26th, 1901, and by violation of her contract entered into between her and the Valley Gas & Fuel Company, and by violation of the rights secured and granted to her by the City of Los Angeles on the
78 22nd day of November, 1901, and by reason of the erection of the gas works and the expenditure of the large sums of money by her expended upon the said premises aforesaid, void because in violation of the provisions of the Constitution of the United States prohibiting any State from passing any law impairing the obligations of contracts and as depriving the plaintiff of her property without due process of law, and the validity of said ordinance of the city of Los Angeles passed on the 3rd day of March, 1902, was drawn in question upon the ground that it was repugnant to the provisions of the Constitution of the United States aforesaid.

And your petitioner further shows that on the 22nd day of September, 1902, your petitioner appealed from the judgment of the said superior court of the county of Los Angeles in said case to this court. That the said appeal was heard in bank in the said supreme court of the State of California, and that on the 29th day of May, A. D. 1903, the said judgment and order of the said superior court was affirmed, and it was adjudged that the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1902, was a valid ordinance as against the rights of your petitioner.

Your petitioner further avers that after the decision of the said supreme court of the State of California in bank, your petitioner filed a petition for a rehearing of the said case in bank, which said petition was on the 29th day of June, A. D. 1903, denied, and the said judgment of the said supreme court has become final.

And your petitioner further shows that in said suit brought by

your petitioner against the said City of Los Angeles there has
79 been a judgment in the highest court in this State in which a decision in the said suit could be had, and that in said action there was drawn in question the validity of the ordinance of the city of Los Angeles No. 7029, new series, passed and adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," upon the ground that said ordinance was repugnant to the Constitution of the United States, and the decision of the State court is in favor of the validity of said ordinance.

And your petitioner alleges that by the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1903, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," the obligation of the contract entered into between your petitioner and the said Valley Gas and Fuel Company, and the obligation of the contract between your petitioner and the City of Los Angeles secured and granted to your petitioner by the said City of Los Angeles on the 22nd day of November, 1901, were impaired, contrary to the provisions of the Constitution of the United States prohibiting the State from passing any law impairing the obligations of a contract, and your petitioner was deprived of her property
80 without due process of law, contrary to the provisions of the fourteenth amendment to the Constitution of the United States prohibiting any State from abridging the privileges and immunities of a citizen, and depriving the petitioner of her property without due process of law.

And the supreme court of the State of California did err in deciding in favor of the validity of the said ordinance of the city of Los Angeles, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," and in not deciding that said ordinance was void as being in violation of the provisions of the Constitution of the United States aforesaid.

Wherefore your petitioner prays that the writ of error presented herewith from the Supreme Court of the United States to the supreme court of the State of California be allowed, and such other process as will enable your petitioner to obtain a review of the said case of Caroline W. Dobbins, plaintiff and plaintiff in error, against The City of Los Angeles, a municipal corporation, defendant and defendant in error, and the correction of the error aforesaid, committed

by the said supreme court of California, and for such other and further orders as may be proper, and your petitioner will ever pray.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Attorneys for Petitioner, Caroline W. Dobbins.

Endorsed: Filed July 21, 1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy.

81 [Endorsed:] R. Copy. L. A. No. 1330. Supreme court of the State of California Caroline W. Dobbins, plaintiff *vs.* City of Los Angeles, a municipal corporation defendant Petition for writ of error Lynn Helm, Lee, Scott, Bailey & Chase, attorney- for plaintiff.
Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk by J. C. Crooks deputy.

82 In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Plaintiff in Error,
vs.
CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Defendant in Error.

Order Allowing Writ of Error.

Upon motion of Lynn Helm and Messrs. Lee, Scott, Baily & Chase, attorneys for plaintiff Caroline W. Dobbins, and upon filing a petition for a writ of error and an assignment of errors,
It is ordered that a writ of error be, and hereby is, allowed to have reviewed in the United States Supreme Court the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500.00).
Dated this 16th day of July, 1903.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk. By J. C. Crooks, deputy.

83 In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Plaintiff in Error,
vs.
CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Defendant in Error.

Order Fixing Bond on Application for a Writ of Error.

The plaintiff, Caroline W. Dobbins, having this day filed her petition for a writ of error from the decision and judgment thereof made

and entered herein to the Supreme Court of the United States, together with an assignment of errors within due time, and also praying that an order be made fixing the amount and security which the plaintiff should give and furnish upon the said writ of error, and said petition having this day been granted, and the said writ of error duly allowed,

Now therefore it is ordered that the bond to be given by the said plaintiff Caroline W. Dobbins upon said writ of error, and the amount thereof is hereby fixed at the sam of five hundred dollars ($500) and the said plaintiff in error shall file with the clerk of said court a good and sufficient bond in the sum of five hundred dollars to the effect that if the said plaintiff in error shall prosecute the said writ of error to effect and answer all damages and costs if she fails to make her plea good, then the said obligation to be void; otherwise to remain in full force and effect. The said bond to be approved by this court.

Dated this 16 day of July, 1903.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

Endorsed: Filed Jul- 21 1903. Frank C. Jordan, clerk. By J. C. Crooks, deputy.

84 In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Plaintiff in Error, *vs.* CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Defendant in Error.	Bond on Application for a Writ of Error.

Know all men by these presents, that we, Caroline W. Dobbins as principal, and the Union Surety & Guaranty Company of Philadelphia, a corporation organized under the laws of the State of Pennsylvania, with authority under the laws of the State of California to execute bonds, are held and firmly bound unto the said defendant, The City of Los Angeles, in the full and just sum of five hundred dollars ($500.00) to be paid to the said defendant, The City of Los Angeles, its attorney or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16 day of July, A. D. 1903.

Whereas, lately at a session of the supreme court of the State of California in a suit pending in said court between the said Caroline W. Dobbins plaintiff, and the said City of Los Angeles defendant, a final judgment was rendered against the said plaintiff, Caroline W. Dobbins, and the said Caroline W. Dobbins having obtained from the said court a writ of error to reverse the judgment in the afore-

said suit, and a citation directed to the said defendant, The
85 City of Los Angeles is about to be issued citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington in the District of Columbia.

Now the condition of the above obligation is such that if the said Caroline W. Dobbins shall prosecute her writ of error to effect and shall answer all damages and costs that may be awarded against her, if she fails to make her plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

CAROLINE W. DOBBINS:
UNION SECURITY & GUARANTY CO.,
By PAUL M. NIPPERT, [SEAL.]
Its Attorney in Fact.

The foregoing and within bond is hereby approved, July 21st, 1903.

W. H. BEATTY,
Chief Justice of the State of California.

Endorsed: Filed Jul- 21, 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

86 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Plaintiff in Error,
vs.
CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Defendant in Error.
} Assignment of Errors.

Caroline W. Dobbins, having petitioned the honorable chief justice of the State of California for an order permitting her to prosecute a writ of error to the honorable, the Supreme Court of the United States from the final judgment made and entered in the said cause by the supreme court of the State of California, now makes and presents and files the following assignment of errors herein and says that in the record and proceedings in the above entitled matter there is manifest error in this, to-wit:

I.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the

erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was valid
87 as to the rights of the said plaintiff in error, Caroline W. Dobbins, acquired before the passage of said ordinance.

II.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was a valid police regulation, lawfully adopted by the city council of the city of Los Angeles in the lawful exercise of the police power granted to the city of Los Angeles by statute of the State of California by its charter, and by the constitution of the said State.

III.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not an invalid ordinance as an unwarranted interference with the enjoyment of the property rights of the said plaintiff in error acquired prior to the adoption of said ordinance, and as an impairment of the
88 obligation of the contracts made before the passage of said ordinance.

IV.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not a valid ordinance as abridging the privileges and immunities of the said plaintiff in error, and depriving her of her property acquired prior to the adoption of said ordinance without due process of law.

V.

By the record and proceedings herein it appears that the supreme court of the State of California erred in not determining that the plaintiff in error was entitled to the relief in a court of equity enjoining the defendant in error, The City of Los Angeles, from enforcing by a criminal prosecution, the said ordinance.

VI.

The supreme court of the State of California erred in giving judgment for the defendant in this action and against the plaintiff.

VII.

The supreme court of the State of California erred in affirming the judgment of the superior court in this case.

VIII.

89 The supreme court of the State of California erred in not reversing the judgment of the superior court in this case and directing the said superior court to enter a decree therein overruling the demurrer to the complaint therein, and ordering that the said defendant be enjoined and restrained from enforcing the said ordinance against the said plaintiff.

By the record aforesaid it appears that the judgment of the said supreme court aforesaid, was given for the defendant in error against the plaintiff in error, and did affirm the judgment of the said superior court of the county of Los Angeles and the various rulings and decisions made therein and hereinbefore set forth, whereas by the law of the land the said judgment of the supreme court of the State of California ought to have reversed the judgment of the said superior court of the county of Los Angeles, and the said decision ought to have been against the validity of the said ordinance of the city of Los Angeles adopted on the 2nd day of March, 1892, as aforesaid, and that said ordinance was repugnant to the Constitution of the United States and void, and the said plaintiff in error prays that the judgment and decision of the supreme court of the State of California may be reversed, annulled and altogether held for naught, and that the said court be directed to reverse the decision of the said superior court of the county of Los Angeles, State of California, and that the plaintiff in error may have such other relief as she may be entitled to.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
Attorneys for Caroline W. Dobbins, Plaintiff in Error.

Endorsed: Filed Jul- 21 1893 Frank C. Jordan, clerk by J. C. Crooks, deputy.

90 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Plaintiff in Error,
vs.
CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Defendant in Error. } L. A., 1430.

It is hereby certified that this cause was ordered to be, and was heard and determined in bank in the supreme court of the State of California, and that the said court in bank did on the 29th day of May, 1903, decide said case and render judgment affirming the judgment and order appealed from. And that thereafter, and within the time prescribed by the rules of said court, to-wit: within twenty days after the filing of said judgment, the said plaintiff filed in said court her petition presented to said court for a rehearing of the said case in said supreme court of the State of California in bank, and said petition was considered and acted upon by the said supreme court of the State of California; and on the 29th day of June, 1903, the said petition for a rehearing was by said court denied, and thereupon said judgment became final and remittitur was issued thereon.

Wherefore, this certificate is ordered to be made a part of the record and to be attested with the seal of said court.

Dated this 16th day of July, 1903.

W. H. BEATTY,
Chief Justice of the State of California,

91 Attest: FRANK C. JORDAN,
Clerk of the Supreme Court of the State of California,
By OSCAR A. TOLLE,
[SEAL.] *Deputy Clerk.*

Endorsed: Filed Jul- 21, 1903 Frank C. Jordan, clerk by J. C. Crooks, deputy.

92 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Plaintiff in Error,
vs.
CITY OF LOS ANGELES, a Municipal Corporation, Defendant and Defendant in Error. } Citation.

To the City of Los Angeles, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington in the District of Columbia, within sixty days from the date

hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Caroline W. Dobbins is plaintiff and plaintiff in error in this action, and you are defendant in the action and defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of the State of California, this 16th day of July, 1903, and the Independence of the United States the one hundred and twenty-ninth.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

Due service of within citation and receipt of copy of writ of
93 error mentioned therein this day admitted, and a copy of the same served upon us at Los Angeles city, California, this 17" day of July, 1903.

W. B. MATHEWS,
DAVIS, RUSH & WILLIS,
Attorneys for Defendant in Error.

94 [Endorsed:] R. L. A. No. 1330. Supreme court of the State of California Caroline W. Dobbins, plaintiff, *vs.* City of Los Angeles, a municipal corporation, defendant. Citation. Lynn Helm, Lee, Scott, Bailey & Chase, attorney- for plaintiff, Los Angeles, California. Filed Jul- 21 1903 Frank C. Jordan, clerk, by J. C. Crooks, deputy.

95 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable justices of the supreme court of the State of California, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California before you or some of you, being the highest court of law or equity of the said State, in which a decision could be had in that certain suit between Caroline W. Dobbins, plaintiff and plaintiff in error, and The City of Los Angeles, a municipal corporation, defendant and defendant in error, wherein was drawn in question the validity of a statute, or an authority exercised under said State, to-wit: an ordinance of the city of Los Angeles, on the ground of their being repugnant to the Constitution, treaties and laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or com-

mission; a manifest error hath happened to the great damage of the said Caroline W. Dobbins, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
96 Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 14th day of September next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 16th day of July, A. D. 1903.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN,
Clerk U. S. Circuit Court, Northern District of California,
By W. B. BEAIZLEY, *Deputy Clerk.*

Allowed by
W. H. BEATTY,
Chief Justice of the Supreme Court
of the State of California.

97 [Endorsed:] L. A. No. 1330 In the Supreme Court of the United States. Caroline W. Dobbins, plaintiff in error, *vs.* City of Los Angeles, a municipal corporation, defendant in error. Original writ of error. Lynn Helm, Lee, Scott, Bailey & Chase, attorneys for plaintiff in error, Los Angeles, California. Filed Jul- 21, 1903, Frank C. Jordan, clerk, by J. C. Crooks, deputy.

98 In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Appellant,
vs.
THE CITY OF LOS ANGELES, ETC., Respondent. } L. A., 1330.

I Frank C. Jordan clerk of the supreme court of the State of California do hereby certify that the preceeding and annexed papers are true copies of the within stated papers in the case above given, which papers are on file in the office of the clerk of the supreme court of the State of California: these copies with the original citation and original writ of error constituting the papers on appeal to the United States Supreme Court.

The papers and copies referred to are, copy of transcript, stipulation of Feb. 7/03, decision of May 29/03, order denying a

rehearing June 29/03. petition for writ of error, order allowing writ of error, order fixing bond, bond, assignment of errors, certificate of final judgment, together with the original citation and original writ of error.

Witness my hand and the seal of the court, this 28th day of July, A. D. 1903.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By J. C. CROOKS, *Deputy*.

Endorsed on cover: File No. 19051. California supreme court. Term No. 400. Caroline W. Dobbins, plaintiff in error, *vs.* The City of Los Angeles. Filed August 19th, 1903.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 400.

Caroline W. Dobbins,
Plaintiff in Error,

vs.

City of Los Angeles, a municipal corporation,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MOTION TO ADVANCE CAUSE AND TO HAVE SAME HEARD WITH CASE OF MARTIN DALY, PLAINTIFF IN ERROR VS. CHARLES ELTON, CHIEF OF POLICE OF THE CITY OF LOS ANGELES, DEFENDANT IN ERROR, NO. 401.

And now comes the said Caroline W. Dobbins, plaintiff in error, and moves to advance the above entitled case in accordance with the provisions of Par. 8 of Rule 26 of this court, the writ of error being to review the final decision of the Supreme Court of the state of California sustaining the judgment of the Superior Court of the county of Los Angeles, dismissing the complaint of the said plaintiff in error, filed therein; and that the said cause be heard with the case of Martin Daly, plaintiff in error, v. Charles Elton, Chief of Police of the city of Los Angeles, defendant in error, now pending in this court, October term 1903, No.

401; the same question being involved in both cases, and motion having been made to advance said case of Martin Daly, plaintiff in error, v. Charles Elton, Chief of Police of the city of Los Angeles, defendant in error, as the same is a criminal case.

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
Attorneys for Plaintiff in Error.

STATEMENT OF MATTERS INVOLVED AND REASONS FOR APPLICATION.

May It Please Your Honors:

The questions involved in this case are:

First: Whether the ordinance of the city of Los Angeles adopted March 3rd, 1902, in reference to the erection and maintenance of gas works, within certain portions of the city of Los Angeles, is valid and binding upon the plaintiff in error, as against her right to conduct a lawful business of erecting gas works and manufacturing gas, or as against the vested rights which she had acquired in reference thereto by virtue of legislative authority.

Second: Whether a court of equity has jurisdiction to restrain by injunction a municipality from instituting criminal proceedings when such prosecutions are threatened or instituted under color of an invalid ordinance, for the purpose of compelling the relinquishment of a property right.

This proceeding instituted in the Superior Court of the county of Los Angeles, state of California, was the complement of the case of Davis & Farnum Manufacturing Company v. the City of Los Angeles, heard and determined in this court at the October term, 1902, and reported in 189 U. S. Reports, 207.

The second of the above questions involved in this case was settled by this court in the case of Davis & Farnum Manufacturing Company v. City of Los Angeles, *supra;* and moreover, the Supreme Court of the state of California having held that the ordinances involved herein were valid, and that therefore the judgment of the Superior Court should be affirmed, this view, as they say in their opinion, made it "unnecessary to consider the questions elaborately

discussed by counsel, to-wit: whether or not a court of equity will ever enjoin a criminal prosecution."

The only question, therefore, before the court, is the same question that is presented in the case of Martin Daly, plaintiff in error, v. Charles Elton, defendant in error, No. 401 of this term.

A brief statement of the matters involved in this case will show that the same issues are presented in both cases.

The complaint of Caroline W. Dobbins was filed to restrain the city of Los Angeles and its officers, from enforcing certain municipal ordinances prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city.

The gravamen of the complaint, as in the case of Davis & Farnum Manufacturing Company v. the City of Los Angeles, was, that on September first, 1901, Caroline W. Dobbins made a contract with the Valley Gas and Fuel Company a California corporation, to build certain gas works for her, including all things necessary for the manufacture, recovery and storage of gas, on lands thereafter to be designated; that on September 17 the Davis & Farnum Manufacturing Company made a contract with the Gas and Fuel Company to erect upon Mrs. Dobbins' premises a water tank and gas holder, having a capacity of 100,000 cubic feet of gas, and that immediately thereafter it constructed and prepared the material and machinery necessary for the erection of the tank and gas holder, and shipped the same to Los Angeles; that on September 28th Mrs. Dobbins purchased certain lands in Los Angeles, which were within the limits wherein it was lawful to erect gas works as described in a municipal ordinance adopted August 26, 1901, and on November 1st, applied to the board of fire commissioners for a permit to erect such gas works; that on November

and her petition came on for hearing before the fire commissioners, and after proof had been made that all provisions of prior ordinances had been complied with, the matter was duly considered, and finally resulted, November 29, in a vote to grant a permit to erect and maintain the gas works.

That upon the 2nd day of November, Mrs. Dobbins' contractors began at once to lay the foundation for said works at a cost of upwards of $20,000, when on November 25, the city adopted an ordinance, amending that of August 26, 1901, including her property in the prohibited territory for the erection or maintenance of gas works, which ordinance, however, seems to have proved defective, and subsequently in February, 1902, caused certain of the employes of the Gas and Fuel Company to be arrested, charging them with a violation of this ordinance. Subsequently under new proceedings certain employes of the plaintiff were arrested and the work stopped.

Another ordinance was passed on March 3, 1902, also amending that of August 26, 1901, and other arrests were made of the employes for a violation of this ordinance. It was averred that the gas works are in an uncompleted condition, exposed to the elements and in danger of being destroyed; that Mrs. Dobbins had expended upwards of $40,000 in said enterprise, and that all of the aforesaid ordinances were adopted by the common council at the instigation of the Los Angeles Light Company, which has enjoyed a monopoly of the gas business for the last ten years.

In the case of Davis & Farnum Manufacturing Company v. Los Angeles, *supra*, the court below sustained the demurrer to the bill and the bill was dismissed, and this judgment of the Circuit Court was affirmed because it was held that Davis & Farnum Manufacturing Company, the

contractors, had no such interest in the subject matter, that they would sustain irreparable injury.

The complaint in this case is by Mrs. Dobbins, the owner of the land and the proposed gas works, to enjoin the city from interfering with carrying out the permit which she had obtained to erect these gas works, and with the rights she had acquired by the erection thereon of gas works, under authority of the municipality.

Notwithstanding this fact, a demurrer to her complaint was sustained by the Superior Court of Los Angeles county, upon a hearing before the Honorable Lucien Shaw, then judge of said Superior Court, and this judgment was affirmed by the Supreme Court of the state of California; that court by a divided court sustaining the validity of said ordinance of March 3rd, 1902.

It will appear from an examination of the record in this case that upon a petition for a rehearing before the Supreme Court of the state of California [Tr. R. F. 67] that Mr. Justice Van Dyke declined to act and that Chief Justice Beatty, Justice Loregan and Justice Henshaw dissented from the order denying a rehearing, Justice McFarland, who wrote the opinion in the case, Justice Angellotti and Justice Shaw (Justice Shaw having been elevated to the Supreme Bench of the state of California after having rendered his decision in the Superior Court of Los Angeles county, California, sustaining the demurrer to the said complaint of the said Caroline W. Dobbins herein) concurring in the order denying the petition for a rehearing.

From this order denying a petition for a rehearing and affirming the judgment of the Superior Court of the state of California, in and for the county of Los Angeles, a writ of error was by the said plaintiff an error, Caroline W.

Dobbins sued out to the said Supreme Court of the state of California and has been duly allowed.

This motion is made to advance this case for argument that it may be heard with the case of Daly v. Elton, Chief of Police, October term, 1903, No. 401, as the questions involved in this case are the same as in that case, motion having been made in that case that the same should be advanced, for the reason that it is a criminal case.

These two cases involve the same questions and should be heard together and argued as one case. [Rule 26, Par. 8.]

It is respectfully suggested that these cases be set down for hearing as soon as possible after the 15th of January, 1904.

Respectfully submitted,

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
Attorneys for Plaintiff in Error.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 107.

Office Supreme Court U. S.
FILED
OCT 1 1904
JAMES H. McKENNEY,
Clerk.

CAROLINE W. DOBBINS, PLAINTIFF IN ERROR,

vs.

THE CITY OF LOS ANGELES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
Attorneys for Plaintiff in Error.

(19,051.)

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

CAROLINE W. DOBBINS,
Plaintiff in Error.
vs.
CITY OF LOS ANGELES,
Defendant in Error.

MARTIN DALY,
Plaintiff in Error.
vs.
CHARLES ELTON, Chief of Police of the City of Los Angeles.
Defendant in Error.

No. 19051—19052.

In Error to the Supreme Court of the State of California.

BRIEF OF PLAINTIFF IN ERROR.

NOTE—As these writs of error have been consolidated and submitted together to this Court for argument, a similar brief has been filed in each case. For convenience, the first of said cases will be referred to in this brief as the "Dobbins" case, and the other as the "Daly" case.

MAY IT PLEASE YOUR HONORS:

There are two general questions to be decided in these cases, viz:

First, whether the ordinance of the City of Los Angeles, adopted on the 26th day of August, 1901, and the amended ordinance of March 3rd, 1902, are valid and binding upon the plaintiff in error, Caroline W. Dobbins, as against her right to conduct a lawful business of erecting gas works and manufacturing gas, or as against the vested rights which she had acquired in reference thereto by virtue of legislative authority, and as against the rights of the plaintiff in error, Martin Daly, as the employee of said Caroline W. Dobbins, engaged in erecting the said gas works for the said plaintiff in error, Caroline W. Dobbins, as being unreasonable and oppressive and in violation of constitutional rights; and

Second, whether a court of equity has jurisdiction to restrain by injunction a municipality from instituting criminal proceedings, when such prosecutions are threatened under color of an invalid ordinance for the purpose of compelling the relinquishment of a property right.

These questions presented by the writs of error herein were attempted to be presented to this Court in the case of *Davis & Farnum Manufacturing Company v. The City of Los Angeles,* 189 U. S., 207; but this Court held, in that case, that as Mrs. Dobbins, the owner of the land and the proposed gas works, was not the plaintiff in that case, nor the Valley Gas & Fuel Company, with which she had made a contract to erect the works, but a sub-contractor, which had made a contract with the Valley Gas & Fuel Company to erect for them and upon the premises to be designated by Mrs. Dobbins, a tank and gas holder, that the plaintiff could not show that it suffered an irreparable loss by the interference of the City, and that the appellant therein had

shown no legal interest in the litigation and no lack of a complete and adequate remedy at law, and therefore that the bill in that case was properly dismissed by the Circuit Court.

The questions now presented to this Court by the writs of error in these cases are presented directly by Caroline W. Dobbins, the owner of the land and the proposed gas works, in a suit to enjoin the enforcement of an unconstitutional ordinance, and by Martin Daly, one of the employes at work upon such gas works, arrested for a violation of the alleged ordinance adopted by the City of Los Angeles, the same ordinance that was sought to be questioned in the case of *Davis & Farnum Manufacturing Company vs. the City of Los Angeles, supra.*

We shall discuss these questions in the order of their statement, for the reason that the question as to the validity of the ordinance above referred to, adopted by the City of Los Angeles, and hereinafter set forth in full, is the question presented directly in both of these cases; in the case of Caroline W. Dobbins, plaintiff in error, by the action brought to enjoin the City of Los Angeles, the defendant in error, from enforcing the ordinance, on the ground that such ordinances are invalid and are being enforced for the purpose of compelling the relinquishment of the property rights of the said plaintiff in error; in the case of Martin Daly, petitioner, upon his petition for a writ of habeas corpus, to be discharged from arrest for the alleged violation of said ordinances.

We shall discuss these questions in the order of their statement for the further reason that if the ordinances are invalid and interfere with the right of the plaintiff in error Mrs. Dobbins, to conduct a lawful business, or with her vested rights which she has acquired by virtue of legislative authority, it will follow that a court of equity has juris-

diction to restrain by injunction the defendant municipality from instituting and prosecuting the criminal proceedings threatened or instituted under color of such invalid ordinances for the purpose of compelling the relinquishment of the property rights of the said plaintiff in error. A crime or offense for which an offender can be prosecuted is not created by an invalid law or ordinance. Every arrest under such an ordinance is a lawless and forcible trespass, and a court of equity will restrain a trespasser from coercing submission to lawless demands by prosecutions for alleged crimes before courts which have no jurisdiction to try the accusation.

STATEMENT OF THE CASE.

The complaint filed in the Dobbins case March 10, 1902, alleges, that on the 26th day of August, 1901, the City Council of the City of Los Angeles passed an ordinance known as Ordinance No. 6663, of which the ordinance of March 3rd, 1902, is an amendment. The ordinance of August 26th, 1901, numbered 6663, is as follows:

> An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles.
>
> The Mayor and Council of the City of Los Angeles do ordain as follows:
>
> Section 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the City of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street, to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

Section 2. Any person, firm or corporation who shall violate any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the City Jail for not less than Thirty (30)

days nor more than One Hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this Ordinance, shall be deemed a seperate offense within the meaning of this Ordinance.

Section 3. Ordinance No. 174, approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. The City Clerk shall certify to the passage of this Ordinance and cause the same to be published once in The Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

Specifically the ordinance provides that it is unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles outside of the district described in the ordinance. That district as originally laid out, included the district bounded on the north by San Fernando street, on the east by the Los Angeles river, making an apex at the junction of San Fernando street and the Los Angeles river, and on the south by the boundary of the city limits. The western boundary was an irregular line, and as we claim, was laid out and described for the purpose of protecting the existing works of the Los Angeles Lighting Company, and was bounded and designated without regard to any geographical or natural lines, but simply described for the purpose of running around and including the present gas works of the Los Angeles Lighting Company in the City of Los Angeles. The violation of this ordinance was made a misdemeanor, punishable by fine or imprisonment, or both, and

every day that such gas works, tank or reservoir should be maintained in violation of the purpose of said ordinance, should be deemed a separate offense within the meaning thereof.

On or about the first day of August, 1901, the plaintiff in error, Caroline W. Dobbins, contemplating the erection of gas works for the purpose of the manufacture, recovery, storage and distribution of gas, for the purpose of supplying the inhabitants of the City of Los Angeles and the inhabitants of cities neighboring and adjacent thereto, caused to be organized a corporation known as the Valley Gas & Fuel Company, which said company was, on the 9th day of August, 1901, duly organized under and by virtue of the laws of the State of California. After the passage of the ordinance of August 20th, 1901, about the first day of September, 1901, the plaintiff in error, Caroline W. Dobbins, made and entered into a contract with the Valley Gas and Fuel Company to build, construct and erect for her on certain premises to be designated by her, certain gas works, including coke ovens and all things necessary for the manufacture, recovery, storage and distribution of gas, said works in themselves consisting of gas generators, gas washers and scrubbers, purifiers and gas holder, and tank, the same to be all completed and to be delivered to said plaintiff in error on or before the first day of January, 1902.

To carry out its undertaking, subsequently the Valley Gas and Fuel Company entered into divers and sundry contracts with divers and sundry persons to do the work necessary for the erection of said coke ovens and gas works.

On the 20th day of September, 1901, the said plaintiff in error, Caroline W. Dobbins, for the purpose of erecting gas works for the manufacture, recovery, storage and distribution of gas for the purpose of supplying the inhabi-

tants of the City of Los Angeles with gas, purchased within the district within the City of Los Angeles within which it was lawful under the ordinance of August 26th, 1901, above set forth, to erect gas works, a tract of land consisting of three lots and a half, and known as lots sixteen, seventeen, eighteen and part of lot fifteen of block two of Pomeroy & Mills' subdivison of the Hollenbeck Tract, described in the bill of complaint filed herein.

On the first day of November following, Mrs. Dobbins applied to the Board of Fire Commissioners of the City of Los Angeles for a permit to erect and maintain gas works on said premises under what is known as the "Building Ordinance of the City of Los Angeles," which required that the person desiring to erect gas works within the City of Los Angeles should first secure from the Board of Fire Commissioners a permit so to do. This ordinance gave the Fire Commissioners, upon a hearing of all parties interested, authority to grant or refuse such permit.

Upon the application of Mrs. Dobbins to the Board of Fire Commissioners for such a permit, notices were properly given of the hearing in accordance with the ordinance to all persons interested, and on the 8th day of November, 1901, a hearing was had before the Fire Commissioners. The Board of Fire Commissioners gave an opportunity to all persons interested to be heard, and having taken the matter under advisement, afterwards, on the 22nd day of November, 1901, the application of the said plaintiff in error, Caroline W. Dobbins, for permission to erect and maintain a gas works was granted.

Mrs. Dobbins, the plaintiff in error, having fully complied with all the ordinances then in force in the City of Los Angeles in reference to the erection of gas works, both as to the place of their erection and as to the securing of a permit from the proper authorities therefor, commenced

the construction of the gas works upon the premises which she had purchased in the district in which it was lawful to erect gas works under the ordinance of August 26th, 1901, and by virtue of the permit granted by the Board of Fire Commissioners. Contracts were immediately let with certain persons, and especially for the laying of foundations for the water tank, scrubbers and generators. Such foundations were laid at once at a cost of upwards of twenty-five hundred dollars, and as the complaint shows, were of great strength and costly materials, and if the same should have to be destroyed or removed would cause irreparable damage or injury to the plaintiff in error, Mrs. Dobbins, and to her contractors.

After the material had all been placed upon the ground for the erection of these foundations, and the foundations were nearly completed, on the 25th day of November, 1901, the City Council of the City of Los Angeles attempted to pass a purported ordinance entitled "An ordinance amending ordinance number 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the said City of Los Angeles,' approved August 26th, 1901, by amending Section one of said ordinance.'" Said purported ordinance is in words and figures as follows:

ORDINANCE NO. 6779.

(New Series.)

An Ordinance amending Ordinance No. 6663, New Series, entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles," approved August 26, 1901, by amending Section 1, of said Ordinance.

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. That Section 1 of Ordinance No. 6663, New Series, entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the City of Los Angeles," approved August 26th, 1901, be and the same is hereby amended to read as follows:

Section 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the City of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence

northerly along the center line of Alameda street to the center line of San Fernando street; thence southeasterly following the line of the Southern Pacific Railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

Section 2. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published once in The Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

By this ordinance an attempt was made to cut out and eliminate from the territory described in the ordinance of August 26th, 1901, the land that had been purchased by Mrs. Dobbins, and being the premises on which she was then erecting the gas works under her permit from the Board of Fire Commisioners.

Nothing was done, however, in reference to the enforcement of this alleged ordinance of November 25th, 1902, until abopt the 27th day of February, 1902. In the meantime, the plaintiff in error, Caroline W. Dobbins, through the said corporation, the Valley Gas & Fuel Company, under the contract of the said plaintiff in error, with said company for the erection of said gas works, was peaceably and lawfully engaged in the erection of the gas works upon the premises above described, and the Valley Gas & Fuel Company had for the said plaintiff in error erected upon the said premises complete the gas generator, and also the scrubbers and washers used in the manufacture of gas; the generators and scrubbers were all complete, except a connection therewith by a pipe necesssary therefor of about six feet in length and about twelve inches in diameter; the water tank and gas holder was commenced upon the foundations prepared

therefor by the Valley Gas & Fuel Company, and was in process of construction without interruption, by Davis & Farnum Manufacturing Company, a corporation of the State of Massachusetts, in the business of manufacturing gas holders and gas tanks, under a contract with the Valley Gas & Fuel Company for the said plaintiff in error, The water tank was to be 62 feet in diameter by 20 feet 9 inches in height, and was to have a capacity of 467,700 gallons of water, and was to be made of sheet steel and iron and to have steel bottoms, thoroughly riveted and made water tight, having a textile strength of 62,000 pounds to the square foot. Inside of the said water tank was to be erected a steel gas holder with a capacity of 100,000 cubic feet of gas, consisting of two lifts wtih proper curbs and cups, each lift being made of steel and to be constructed in a good workmanlike manner, at a cost of $13,685. All the iron and steel used in the construction of the tank and gas holder were upon the ground at the time of the filing of the complaint herein in the Superior Court of Los Angeles County, and ready to be put in place, and the tank was already erected to a height of 15 feet 9 inches, and if the contractors engaged in erecting said work had been allowed to complete said tank they would in the course of a week or ten days have had the same fully completed and within six weeks have had the gas holder completed and put in place ready to be delivered to the said plaintiff in error. It is averred that if the work of erecting said works could be continued peaceably and without interference from the said defendant in error, the City of Los Angeles, that the same would be completed and ready for operation within the period of about six weeks from the date of the filing of the said complaint.

While the plaintiff in error, Caroline W. Dobbins, and her contractors and sub-contractors were lawfully and

peaceably engaged in the erection of said gas works and said gas holder, up to and including the 25th day of February, 1902, on the 25th day of February, 1902, the said defendant in error, the City of Los Angeles, combining and confederating with one James R. C. Burton, and with divers and sundry persons to the plaintiff in error unknown, in the name of the people of the State of California, instituted a proceeding in the police court of the City of Los Angeles against F. A. Smith and Thaddeus Lowe, then in the employ of the Valley Gas & Fuel Company, in the erection of said works on the premises of the said plaintiff in error, Caroline W. Dobbins, as hereinbefore described, charging the said F. A. Smith and the said Thaddeus Lowe with having committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected certain works, establishments and manufactories for the manufacture of gas, and a certain reservoir and receptacle for the storage of gas within the corporate limits of the City of Los Angeles, attempted to be described in the purported ordinance attempted to be passed by the said Council of the City of Los Angeles on the 25th day of November, 1901, and last hereinbefore set forth; and thereupon, upon the complaint filed in the said proceeding filed in the said police court of the City of Los Angeles on the 25th day of February, 1902, caused the arrest and detention of said Thaddeus Lowe and said F. A. Smith, upon a warrant issued by the Judge of said police court of the City of Los Angeles for the alleged violation of the said city ordinance.

On the first day of March, 1902, the City of Los Angeles again combining and confederating with the said James R. C. Burton, and with divers and sundry persons to the said plaintiff in error unknown, in the name of the people of the State of California, instituted another pro-

ceeding in the police court of the City of Los Angeles against the said F. A. Smith, Thaddeus Lowe and four other persons then and there engaged upon said premises in the employ of the said Valley Gas & Fuel Company, or of other persons engaged in the erection of said gas works on the premises of the plaintiff in error, Caroline W. Dobbins, hereinbefore described, charging them, as in the last complaint described; and on the first day of March, 1902, caused the arrest and detention of the said F. A. Smith, Thaddeus Lowe and the four other persons above mentioned upon a warrant issued by the Judge of said Police Court of the City of Los Angeles for the violation of said ordinance.

Afterwards, on the first day of March, 1901, the said defendant, the City of Los Angeles, again combining and confederating with the said James R. C. Burton, and with divers and sundry other persons to the plaintiff in error unknown, in the name of the people of the State of California, instituted another proceeding in the Police Court of the City of Los Angeles against the said F. A. Smith, Thaddeus Lowe and fourteen other persons engaged in the erection of said gas works for the said plaintiff in error, Caroline W. Dobbins, or her contractors on the premises of the said plaintiff in error hereinbefore described in carrying out the contracts entered into between the said plaintiff in error and the said Valley Gas & Fuel Company for the erection of the gas works aforesaid, charging the said persons in said complaint named with having committed a misdemeanor, as in said first complaint alleged; and thereupon, on the 1st day of March, 1902, caused the arrest and detention of the said defendants in said complaint mentioned, sixteen persons in all, upon a warrant issued by the Judge of said Police Court of the City of Los An-

geles for the alleged violation of the said alleged city ordinance last hereinbefore set forth.

The arrest and detention of the said employes of the said plaintiff in error, Caroline W. Dobbins, and her subcontractors seriously interfered with and interrupted the work of the said plaintiff in error and all her contractors in erecting said gas works and was in violation of the rights of the said plaintiff in error as acquired under and by virtue of her contract with the Valley Gas & Fuel Company, and also in violation of the rights granted to the said plaintiff in error by the City of Los Angeles on the 22d day of November, 1901.

On the 3rd day of March, 1902, the City of Los Angeles, recognizing the invalidity of the alleged ordinance attempted to be passed and adopted by the City Council of the City of Los Angeles November 25th, 1901, as hereinbefore set forth, attempted by its Mayor and Council to pass another purported ordinance entitled "An ordinance amending ordinance number 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs, within certain portions of the City of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," which said purported ordinance is in words and figures as follows:

ORDINANCE NO. 7029.

(New Series.)

An Ordinance amending Ordinance No. 6663, New Series, entitled, "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles," approved August 26, 1901, by amending Section 1 of said Ordinance.

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. That Section 1 of Ordinance No. 6663, New Series, entitled, "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

Section 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the City of Los Angeles; thence westerly along the south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue, and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence

westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific Railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

Section 2. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

Plaintiff in error, Caroline W. Dobbins, was endeavoring in all respects, as she lawfully might, to erect and have erected upon the premises hereinbefore described the said gas works, but while the men in the employ of the said plaintiff in error and her said sub-contractors engaged upon the contracts above described were engaged in the erection of said gas works, the City of Los Angeles on the 6th day of March, 1902, again combining and confederating with the said James R. C. Burton and with divers and sundry other persons to the said plaintiffs in error unknown, in the name of the people of the State of California, instituted another proceeding in the Police Court of the City of Los Angeles against the said Thaddeus Lowe, F. A. Smith, the said plaintiff in error, Martin Daly and twenty-one other persons, employes engaged in the erection of said gas works upon the premises aforesaid, charging said F. A. Smith,

the said Thaddeus Lowe and the said plaintiff in error, Martin Daly, and the said twenty-one other persons with having committed a misdemeanor, in that they did wilfully and unlawfully erect or cause to be erected, maintain or cause to be maintained, certain works, establishments and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of the said City of Los Angeles, and outside of the limits of the said alleged district described in said purported ordinance attempted to be passed by the City Council of the City of Los Angeles on the 3rd day of March, 1902, as hereinbefore set forth; and thereupon, upon the complaint filed in said proceeding in said Police Court of the City of Los Angeles, on the 6th day of March, 1902, caused the arrest of the said Thaddeus Lowe, F. A. Smith, the said plaintiff in error, Martin Daly, and the twenty-one other persons above referred to, upon a warrant issued by the Judge of said Police Court of the City of Los Angeles for the alleged violation of the said alleged ordinance.

The complaint filed by Caroline W. Dobbins alleges that the said City of Los Angeles, continuing to combine and confederate with the said James R. C. Burton and with divers and sundry persons to said plaintiff in error unknown, threatens in the name of the people of the State of California, to institute other proceedings in the Police Court of the City of Los Angeles against the employes of the said plaintiff in error under said contractors engaged in the erection of said gas works on the premises of the said plaintiff in error, and threatens to charge them and each of them with having committed other misdemeanors, charging them and each of them with wilfully and unlawfully erecting or causing to be erected, maintaining or causing to be maintained, works, establishments or manufactories for the manufacture of gas, or tanks, reservoirs or receptacles for the

storage of gas within the corporate limits of the City of Los Angeles, and outside of the limits described in said purported ordinance, attempted to be passed by the City Council of the City of Los Angeles on the 3rd day of March, 1902, as hereinbefore set forth; and that said City of Los Angeles threatens to cause the arrest and detention of said employes engaged in the erection of said gas works and to imprison and confine them for alleged violation of the said alleged city ordinance; and the said City of Los Angeles threatens that if the said plaintiff in error, Caroline W. Dobbins, continues to carry on her said work in which she is engaged in completing the said gas works and manufactory for the manufacture of gas, that it will arrest all persons employed and engaged in said work until it will have stopped the construction of said gas works and compelled the said plaintiff in error to desist from the erection thereof.

Plaintiff in error, Caroline O. Dobbins, averred that unless the defendant, the City of Los Angeles be restrained and enjoined by said Superior Court from executing its said threats, that the said City of Los Angeles will arrest and continue to arrest the men employed in the erection of said gas works on the premises of the said plaintiff in error until said work is stopped, and the said plaintiff in error is unable to complete the said undertakings entered into by her in the erection of said gas works as aforesaid.

In her complaint, plaintiff in error, Caroline W. Dobbins, alleges that ever since the inception of the said enterprise so instituted, commenced and undertaken by the said plaintiff in error, the said defendant, the City of Los Angeles, and the municipal authorities thereof, its officers and agents, have continuously thrown obstacles in the way of the successful completion of the said enterprise of the said

plaintiff in error and have continuously and systematically attempted to thwart and frustrate the plans of the said plaintiff in error, and have interfered with and interrupted her said work in various portions thereof; that immediately after the organization, at the instance of and for the benefit of the said plaintiff in error, Caroline W. Hebbins, of the said Valley Gas & Fuel Company, the said City Council of the City of Los Angeles attempted to pass and adopt the Ordinance number 6663, New Series, which was adopted on the 26th day of August, 1901, as aforesaid, entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles;" and afterwards, when the said plaintiff in error had purchased, within the district prescribed by the said ordinance last hereinbefore referred to, the land upon which she proposed to erect the said gas works, and when, on or about the 29th day of September, 1901, an application had been made to the Board of Fire Commissioners of the City of Los Angeles for a permit to erect gas works upon said premises, the said City Council considered and deliberated upon an ordinance then and there introduced in said City Council of the City of Los Angeles, entitled "An Ordinance amending Ordinance No. 6663, New Series, entitled 'An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles,' approved August 26, 1901, by amending Section 1 of said ordinance," the object of said ordinance being to further restrict the limits of the district in the City of Los Angeles in which it was lawful to erect and maintain gas works, by which said ordinance it was proposed to eliminate from the district theretofore described in the alleged ordinance adopted on the 26th of August, 1901, all that portion of said district lying between San Fernando street on the north

of the said ordinance; and thereupon, at the next meeting of the said Board of Fire Commissioners of the City of Los Angeles the said rule and regulation hereinafter referred to, having theretofore been considered by the said Board of Fire Commissioners as aforesaid, was, at the meeting of the Board of Fire Commissioners on or about the 25th day of October, 1901, adopted, in words and figures as follows:

"Whereas, applications are on file with this Board for permission to erect gas manufacturing plants at different points within the district to which said plants are limited; and, whereas, a very great majority of the property owners living in the vicinity of locations for which applications are made protest against the granting of permits; and, whereas, this Board is satisfied that the respective applicants for permission to build are attempting to engage in the business of the distribution of gas for general purposes, including its use for fuel and power, without first procuring a franchise from the city for said right; now, therefore, be it resolved, that all applications now pending before this Board for permission to erect gas manufacturing plants are hereby denied; that, hereafter, in all cases where an application for permission to erect a gas manufacturing plant shall be made to this commission, the said application shall state whether or not the gas so manufactured is to be supplied to the inhabitants of the City of Los Angeles for illuminating purposes only. Said application shall be verified by the oath of the applicant, and in case it shall appear to the commission that no proper ground exists for the denial of the application, and that said gas is to be used for illuminating purposes only, the same shall be forthwith granted. But in case it shall appear that the gas is to be furnished for general purposes, such as fuel, power, etc., then the applicant therefor must procure a franchise from the City of Los Angeles to distribute gas before his said application will be finally granted by this commission."

The effect of which rule was to dismiss and deny the application theretofore made for permission to erect gas works

upon the premises of the said plaintiff in error as hereinbefore set forth; that afterwards, on the 1st day of November, 1901, the said plaintiff in error, Caroline W. Dobbins, having complied with all the rules and regulations of the said Board of Fire Commissioners, made an application on her own behalf for a permit to erect gas works upon said premises hereinbefore described, and afterwards, on the 22nd day of November, 1901, the said Board of Fire Commissioners granted the said permit to the said plaintiff in error as hereinbefore set forth, and thereupon the said City Council of the City of Los Angeles, as soon thereafter as they met, to-wit, on the 25th day of November, 1901, attempted to pass and adopt the ordinance No. 6779, New Series, entitled "An Ordinance amending Ordinance No. 6663, New Series, entitled 'An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles,' approved August 26, 1901, by amending section 1 of said ordinance," as hereinbefore set forth; that in addition to the acts of the said municipal authorities of the said City of Los Angeles hereinbefore set forth, on or about the 7th day of October, 1901, the said City Council of the City of Los Angeles attempted to pass a certain other purported ordinance known as Ordinance No. 6726, New Series, entitled, "An Ordinance prohibiting the use of any public street or thoroughfare in the City of Los Angeles for the purpose of laying down or maintaining therein any pipe, conduit or connections therewith without a franchise," wherein and whereby the said City of Los Angeles attempted to ordain that it should be unlawful for any person, firm or corporation to lay down any pipe, conduit or connections therewith in any public street or thoroughfare in the City of Los Angeles for the purpose of supplying said city or its inhabitants with fresh water or with gas used exclusively for illu-

mination or with other illuminating light, without first obtaining a permit from the Superintendent of Streets to make the necessary excavations therefor, and that any person, firm or corporation desiring to obtain such permit should file with the Superintendent of Streets an application therefor in writing, setting forth the public streets or thoroughfares and the particular portions thereof which it was desired to excavate, the size and character of the excavation to be made, and specifically the purpose for which the pipe, conduit or connection therewith was to be used, whether for water, gas or electricity, and if for gas or electricity that said gas or electricity was to be supplied solely to said city or its inhabitants to be used exclusively for illumination, and that said application must be verified by the oath of such person, or by the oath of a member of such firm or by the oath of the president and secretary of such corporation as the case may be; that thereafter, when the said plaintiff in error, Caroline W. Dobbins, desired to make an application for permit to excavate the streets of the City of Los Angeles for the purpose of laying pipes in order to distribute to the citizens of the City of Los Angeles gas by her to be manufactured, for the purpose of supplying them with artificial light, the Superintendent of Streets of the City of Los Angeles unlawfully required of the said plaintiff in error an application therefor in writing, setting forth the public streets and thoroughfares, and the particular portions thereof, which it was desired by the said plaintiff in error to excavate, the size and character of the excavations to be made, and specifying the purpose for which the pipe, conduit or connections therewith was to be used, and that said gas was to be supplied solely for the city or its inhabitants to be used exclusively for illumination, and required that the said application should be verified by the oath of the said plaintiff in error, all of which requirements were unlawful

and were for the purpose of annoying, harassing, impeding, hindering and delaying the said plaintiff in error in her attempt to carry out successfully the lawful enterprise in which she was engaged; that thereafter, in addition to the adoption of the said purported ordinance so attempted to be adopted by the City Council of the City of Los Angeles, and in addition to the acts of the said Superintendent of Streets of the City of Los Angeles hereinbefore set forth, the said City of Los Angeles, through its City Attorney, prosecuted the proceedings instituted by the said James R. C. Burton hereinbefore set forth for the arrest of and detention of the men employed in the construction and erection of the said gas works of the said plaintiff in error; all of which acts and doings on the part of the City of Los Angeles, its municipal authorities, officers and agents, as set forth in said complaint the said plaintiff in error charged and averred were for the purpose of hindering, harassing, impeding, delaying and frustrating the efforts and attempts of the said plaintiff in error to carry out the lawful business and enterprise so undertaken by her as aforesaid, and were instituted and prosecuted for the purpose of compelling the said plaintiff in error to stop and abandon the further prosecution of said enterprise.

It is alleged in said complaint upon information and belief that the said defendant, the City of Los Angeles and the municipal authorities, officers and employees thereof were in their acts and doings hereinbefore set forth wilfully and unlawfully instigated, advised and controlled by the officers, attorneys, agents and employees of the Los Angeles Lighting Company, a corporation organized under the laws of the State of California, engaged in the manufacture and supplying of gas in the City of Los Angeles, and which said company has, for upwards of ten years last past, enjoyed a monopoly of the gas business in the said City of Los Angeles;

that said Los Angeles Lighting Company, through its officers, attorneys, agents and employees, has had sufficient influence with the municipal government of the said City of Los Angeles, and with its officers, to bring about the passage and adoption of the alleged ordinances hereinbefore set forth which the said City Council of the City of Los Angeles has attempted to adopt since the commencement of the enterprise undertaken by the said plaintiff in error, and has had sufficient influence with the officers and employees of the said City of Los Angeles to compel them to enforce and attempt to enforce the alleged ordinances so attempted to be passed and adopted by the City Council of Los Angeles as aforesaid against the said plaintiff in error, her agents, contractors and employees engaged in the erection of said gas works and the laying of pipes in the streets of the City of Los Angeles on behalf of the said plaintiff in error in enabling her to carry out the enterprise aforesaid; that all of said ordinances attempted to be passed and adopted by the City Council of the City of Los Angeles restricting the limits of the City of Los Angeles in which it was lawful to erect gas works as prescribed by the ordinance adopted by the City Council of the City of Los Angeles on the 26th day of August, 1901, herein set forth, were prepared by the attorneys and agents of the said Los Angeles Lighting Company and by them presented to the members of the City Council of the City of Los Angeles for adoption; that before the attempted adoption of the said alleged ordinance of the 25th day of November, 1901, hereinbefore set forth, the said Los Angeles Lighting Company, through its attorneys and agents, in order to comply with the rules and regulations of the said City Council that before the passage of any ordinance a printed copy thereof should be furnished to each of the members of the City Council of the said City of Los Angeles, caused to be printed and distributed to the members of the

City Council of the City of Los Angeles, printed copies of the proposed ordinance, which the said City Council afterwards, on the 25th day of November, 1901, attempted to adopt and pass as aforesaid; that the said Street Superintendent of the City of Los Angeles, under the restrictions purporting to be placed upon him by the City Council of the City of Los Angeles by the attempted adoption of the alleged ordinance number 6726, New Series, last herein referred to, being compelled to demand of the said plaintiff in error a verified application for a permit to open the streets of the City of Los Angeles for the purpose of laying pipes therein for the purpose of distributing gas by her to be manufactured, contrary to the rights of the said plaintiff in error, to use the streets of the said City of Los Angeles for the purpose of laying pipes therein, as guaranteed to her by section 19, article XI, of the constitution of the State of California, thereupon the said Los Angeles Lighting Company its agents and employees, caused to be and had printed and caused to be delivered by its agents to the said Superintendent of Streets of the City of Los Angeles, printed blanks prepared by their attorneys for applications for permits to excavate in public streets of the City of Los Angeles; that the said Los Angeles Lighting Company, its officers and agents, combining and confederating with the said James R. C. Burton and with divers and sundry persons to the said plaintiff in error unknown, have compelled the City Attorney of the City of Los Angeles and his deputies and assistants to prepare the complaints in the proceedings instituted by the said James R. C. Burton in the name of the People of the State of California against the employees of the said plaintiff in error, Caroline W. Dobbins, and her said contractors engaged in the erection of the said gas works as hereinbefore set forth, and have induced the filing of said complaints and the issuance of the warrants thereon

and the arrest and imprisonment and detention by the officers of the City of Los Angeles of the said employes; and that the said Los Angeles Lighting Company, by its officers, attorneys, agents and employes, has boasted and threatened that if the said prosecutions so instituted by the said James R. C. Burton against the employes of the said plaintiff in error and her said contractors shall fail, and if the said ordinances hereinbefore set forth shall be declared void and invalid, they will, by their influence and their efforts, secure the passage by the City Council of the City of Los Angeles of an ordinance regulating the gas business in the City of Los Angeles and requiring the payment of a license, which license they have boasted and threatened shall be prohibitory in its nature and so high as to prevent the said plaintiff in error from carrying on the business of manufacturing and distributing gas within the City of Los Angeles.

Plaintiff in error, Caroline W. Dobbins, further alleged that each and every of the acts aforesaid so performed by the City of Los Angeles, its officers, agents and employees, were done and performed, not for the purpose of protecting any public interest or preserving any public right, but that said acts and each of them were suggested and formulated by the said Los Angeles Lighting Company, its officers, attorneys, agents and employees, solely for the purpose of protecting the said Los Angeles Lighting Company in the enjoyment of that monopoly which has continued for upwards of ten years, as hereinbefore set forth, and for the purpose of depriving the said plaintiff in error of vested rights in property and of the privilege of pursuing her lawful undertaking and enterprise as the same is hereinbefore specifically set forth.

It is further alleged that the territory surrounding the premises of the said plaintiff in error, Caroline W. Dobbins,

hereinbefore described, in which the said gas works of the said plaintiff in error are being erected, and which was by Ordinance No. 6663, New Series, hereinbefore set forth, a portion of the territory within which the City of Los Angeles permitted the maintenance of gas works, is and was a district devoted to manufacturing and commercial enterprises almost exclusively; that in said district prior to the purchase of the property herein described by the said plaintiff in error and upon which the said gas works are being erected for said plaintiff in error as aforesaid, there was in operation a soap factory; that at all times since the 1st day of August, 1901, there has been and is now maintained within the district bounded by Rodondo and Alhambra streets, the Los Angeles river and San Fernando street, in said City of Los Angeles, one wool-pulling factory, which is directly across North Main street from the said premises of the said plaintiff in error, three wineries, numerous oil wells in operation, an extensive iron foundry in active operation, a brass foundry, and an extensive oil refinery; and that there is a great deal of vacant and unoccupied land which is and will continue to be comparatively worthless except for the purposes of the erection theron of manufacturing establishments; that immediately adjacent to the easterly line of said district last herein described are the tracks of the Southern California Railway, on which are operated the freight and passengers trains of the Santa Fe Railroad; that east of that and adjacent thereto is the Los Angeles river, and that east thereof is the right-of-way and tracks of the San Pedro, Los Angeles and Salt Lake Railroad; that immediately east of those tracks an extensive tannery is located and in operation; that immediately north of said district and north of San Fernando street, and adjacent to the tracks of the Santa Fe railroad are the oil tanks and refinery of the Standard Oil Company in extensive operation; that prior to the granting

of the permit by the Board of Fire Commissioners of the City of Los Angeles to the said plaintiff in error on the 22nd day of November, 1901, the said Board of Fire Commissioners and the members of said commission individually and jointly visited and examined the said premises and the said district surrounding the same, and having heard the protests of all persons who appeared before them, decided and determined by the granting of said permit that said premises were in all respects a suitable place upon which to erect the said gas works and to conduct the business of manufacturing gas.

It is alleged that said gas works are being constructed and are to be completed upon concrete foundations, with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible, and that the same are so firmly and substantially constructed that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most approved pattern, and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said plaintiff in error, Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery therein contained, so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the said district and territory in which the said gas works are located upon the premises of the said plaintiff in error, as hereinbefore described, or of any other of the inhabitants of the said City of Los Angeles.

It is manifest, as is alleged in said complaint, that if the said City of Los Angeles, its officers and employees, shall be allowed to arrest and to continue to arrest the

employees and servants of the said plaintiff in error, Caroline W. Dobbins, and her contractors so engaged in the completing and erection of said gas works, or in the operation and maintenance thereof when completed, and the said defendant in error, the City of Los Angeles, is allowed to carry its said threats into execution, the said plaintiff in error will be deprived of the rights of property she has already acquired and she will suffer great and irreparable loss; that already, by the acts of the said defendant in error in hindering and delaying the said plaintiff in error in manner as hereinbefore described, in the erection of said gas works and carrying out the enterprise contemplated by her of manufacturing, distributing and selling gas, the said plaintiff in error has suffered, it is alleged, damages of upwards of the sum of twenty-five thousand dollars ($25,000) in the loss of profits which would otherwise have accrued to her therefrom, that if by said acts and threatened acts of the said defendant in error the said plaintiff in error and her contractors are compelled to desist and cease the completion of said gas works, the said works partially completed as hereinbefore set forth and in their uncompleted conditon, and the said materials consisting of steel plates, iron, etc., lying unprotected and uncovered upon the premises aforesaid, are and will be exposed to the action of the elements and will be thereby greatly damaged and impaired in value and in imminent danger of complete destruction; that in the erection of said gas works, in the laying of pipe for the distribution of gas therefrom, and in the purchase of other materials to enable the said plaintiff in error to complete and carry out the said enterprise undertaken by her as aforesaid the said plaintiff in error has already paid, laid out, and expended upwards of the sum of fifty thousand dollars, over and above the cost of the premises hereinbefore described, and if the defendant in error is allowed

to carry out its said threats the said amount so paid, laid out and expended by the said plaintiff in error will become and be almost a total loss to said plaintiff in error; that in the erection and construction of said gas works skilled mechanics are necessary, and the same have been brought from divers and sundry places, from great distance from the City of Los Angeles, to wit, from Trenton, in the State of New Jersey, Philadelphia in the State of Pennsylvania, Toledo in the State of Ohio, San Francisco in the State of California, and other places, and if said City of Los Angeles is allowed to execute its said threats and arrest the said men, it is alleged said men threatened to and would leave the employ of the said plaintiff in error and her said contractors, and if said work shall be retarded and interrupted by reason of said threats and execution thereof by said City of Los Angeles, as it will be if said threats are executed, the said skilled laborers and mechanics so employed by the said plaintiff in error and her said contractors would become scattered and it would be impossible to again obtain the services of said men or the services of like men in such employment; that if said defendant in error, the City of Los Angeles, is allowed to carry out the said threats, the said employes of the said plaintiff in error and her said contractors would be subjected daily to arrests for alleged violation of the alleged ordinances, and even though the said employes should successfully defend such prosecutions, said city, defendant in error, threatened and said plaintiff in error verily believed it would continue to harrass said plaintiff in error and said employes, by repeated arrests for alleged violations of the said purported ordinances which plaintiff in error alleged to be invalid, and further, alleged that pending the final determination of the validity of said alleged ordinances by the successful completeness of the defenses interposed against said prosecutions,

the said plaintiff in error would be subjected to great expense, inconvenience and embarassment and all without any possible redress or adequate remedy at law, to the manifest injury and irreparable loss of the said plaintiff in error.

The prayer of the complaint is that the contract, entered into between the said plaintiff in error and the said defendant in error, the City of Los Angeles by virtue of the permit granted to her on the 22nd day of November, 1901, be declared and determined to be a valid and existing contract between the said City of Los Angeles and the said plaintiff in error and that all the alleged ordinances attempted to be passed by the City Council of Los Angeles in contravention thereof or in violation of the terms thereof be declared null and void as against the rights of the said plaintiff in error and that the City of Los Angeles be enjoined from enforcing the alleged ordinances numbers 6779 and 7029 against the said plaintiff in error, Caroline W. Dobbins or any of her agents, contractors, servants or employes, and from prosecuting or proceeding with any prosecutions commenced or to be commenced against the plaintiff in error or any of her agents, contractors, servants or employes, or the employes of any of them heretofore engaged or now engaged or that may hereafter be engaged in the erection of said works on the premises described in said complaint; and that the said defendant in error, the City of Los Angeles, may be enjoined and restrained from in any manner hindering, delaying or interfering with or prohibiting or preventing the said plaintiff in error from carrying out her said enterprise in erecting the said gas works upon her premises in said complaint described; and that they further be enjoined from in any way interfering with the operation or maintenance or management of the said gas works of the said plaintiff in error and for general relief.

To this complaint, on the 14th day of March, 1902, the

defendant in error, the City of Los Angeles, filed a demurrer and for ground of demurrer alleged that said complaint did not state facts sufficient to constitute a cause of action, and that the superior court of Los Angeles County had no jurisdiction of the person of the defendant or of the subject of the action.

On the hearing of this demurrer in the Superior Court of Los Angeles County, the demurrer was sustained and a judgment was entered in favor of the defendant in error on the demurrer, and for costs. From this order and judgment entered therein, the plaintiff in error, Caroline W. Dobbins, appealed to the Supreme Court of the State of California, and therein, on the 29th day of May, 1903, the Supreme Court of California filed an opinion and entered an order affirming said judgment as set forth in the transcript of the record (in the Dobbins case) herein, folios 59-65. A petition for a rehearing was filed in said cause, and afterwards, on the 27th day of June, 1903, this petition for a rehearing was denied, the Supreme Court of the State of California being divided thereon, three judges thereof agreeing upon an order to deny said rehearing, and three judges thereof dissenting. Tr. of record, folio 67.

For the reasons given in the opinion filed in the case of Caroline W. Dobbins vs. the City of Los Angeles, the Supreme Court of California discharged the writ of habeas corpus in the case of Martin Daly and remanded the prisoner to the custody of the Chief of Police of the City of Los Angeles. A petition was filed in this Daly case for a rehearing and a rehearing denied with a like result as in the Dobbins case. Transcript of record in the Daly case, folios 48 to 57, inclusive.

The petition for the writ of habeas corpus by the plaintiff in error, Martin Daly, was filed on the 30th day of June, 1902, at which time he was imprisoned, restrained

and confined of his liberty by Charles Elton, Chief of Police of the City of Los Angeles, defendant in error, by virtue of the warrant of arrest issued out of the Police Court of the City of Los Angeles on the 6th day of March, 1902, charging that the said petitioner, Martin Daly, and others therein named, had on the 6th day of March, 1902, in the City of Los Angeles, committed a misdemeanor in wilfully and unlawfully erecting and causing to be erected, maintained and causing to be maintained, certain works, establishment and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described in the ordinance in said petition for the writ of habeas corpus and hereinbefore set forth as the ordinance adopted by the City of Los Angeles on the 26th day of August, 1901, and the amendment thereto adopted on the 3rd day of March, 1902.

Martin Daly, the plaintiff in error, was the foreman in charge of said work and was acting as foreman for Davis & Farnum Manufacturing Company, in charge of the erection of the gas holder, and water tank of said gas works. The petition set forth the same facts that are set forth in the bill of complaint of Caroline W. Dobbins, as hereinbefore stated, and in such petition for a writ of habeas corpus, the said petitioner sought to have declared and determined that said complaint upon which petitoner was charged, did not state a public offense in that said alleged ordinances of the City of Los Angeles were void and invalid ordinances as against the valid rights acquired by said Caroline W. Dobbins and the said petitioner as her employee in the erection of said works.

It was contended and averred on behalf of plaintiff, in the Dobbins case, and in the petition for a habeas corpus, in the Daly case, that the ordinance attempted to be adopted

by the City of Los Angeles on the 26th day of August, 1901, entitled "An ordinance prohibiting the erection and maintenance of gas works, gas tanks and reservoirs within certain portions of the City of Los Angeles," and the amendment thereto of March 3rd, 1902, are void and invalid ordinances and were in violation of the provisions of the Constitution of the State of California and the provisions of the Fourteenth amendment of the Constitution of the United States, in that it was an attempt on the part of the City of Los Angeles to make and enforce a law which abridged the privileges and immunities of the citizens of the United States in that it attempted to prohibit the erection or maintenance of any works, or establishment or manufactory for the manufacture of gas, and the storage of gas within the corporate limits of the City of Los Angeles, except within the limits described in said ordinances for that said business of erecting and maintaining gas works was not a nuisance, but was a lawful occupation and protected by the provisions of Section 19, Article 11, of the Constitution of the State of California.

It was contended and averred in both the complaint of the said Caroline W. Dobbins, plaintiff in error, and in the petition for the writ of habeas corpus of the said Daly, that the ordinances attempted to be adopted by the City Council of the City of Los Angeles on the 25th day of November, 1901, and on the 3rd day of March, 1902, were void and invalid in that they were uncertain and unreasonable and were an attempt to regulate in an unlawful manner and without authority, the business of erecting gas works within the City of Los Angeles and were in violation of the rights secured and granted to the plaintiff by the City of Los Angeles on the 22nd day of November, 1901, and were in violation of the provisions of the Constitution of the State of California and of the Constitution of the United States,

prohibiting the passing of any laws impairing the obligations of contracts.

It was contended and averred in both the complaint of the said Caroline W. Dobbins, plaintiff in error, and in the petition for writ of habeas corpus of the said Daly, that the ordinances in question were unreasonable and oppressive, and therefore void, and infringed the rights guaranteed by the Constitution of the United States, as intending to deprive the said plaintiffs in error of their property without due process of law, and that they were not adopted by the City Council of the City of Los Angeles in the exercise of a reasonable discretion, but were a mere exercise of an unjust discrimination and to the oppression of the said plaintiffs in error.

Said ordinances are in violation of the Fourteenth Amendment of the Constitution of the United States as denying to all persons within the jurisdiction of the City of Los Angeles the equal protection of the law, and as being passed in an attempt on the part of the authorities of the City of Los Angeles to foster a monopoly, and to protect the Los Angeles Lighting Company in the enjoyment of a monopoly of the business of manufacturing and distributing gas in the City of Los Angeles and for the purpose of discriminating against the said plaintiff and to prevent her from establishing and maintaining a gas works within the limits of the City of Los Angeles.

SPECIFICATIONS OF ERROR.

I.

The Supreme Court of the State of California erred in deciding that the ordinance adopted by the City Council of the City of Los Angeles on the 26th day of August, 1901, number 6663, new series, entitled "An ordinance pro-

hibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles" was a valid ordinance, and that it was not in violation of the provisions of the Constitution of the State of California, and the provisions of the Fourteenth Amendment of the Constitution of the United States, in that it was an attempt upon the part of the City of Los Angeles to make and enforce a law which abridged the privileges and immunities of the citizens of the United States.

II.

The Supreme Court of the State of California erred in deciding that the ordinance adopted by the City Council of the City of Los Angeles on the 3rd day of March, 1902, Number 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs, within certain portions of the City of Los Angeles, approved August 26, 1901,' by amending section one of said ordinance" was valid as to the rights of the said plaintiff in error, Caroline W. Dobbins, acquired before the passage of said ordinance, and as against the rights of the said plaintiffs in error, Martin Daly, as an employee of Caroline W. Dobbins, acquired before the passage of said ordinance.

III.

The Supreme Court of the State of California erred in deciding that the ordinance adopted by the city council of the City of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or

reservoirs within certain portions of the City of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was a valid police regulation, lawfully adopted by the city council of the city of Los Angeles in the lawful exercise of the police power granted to the city of Los Angeles by statute of the State of California, by its charter, and by the constitution of the said State.

IV.

That the Supreme Court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not an invalid ordinance as an unwarranted interference with the enjoyment of the property rights of the said plaintiff in error, Caroline W. Dobbins, and of the said plaintiff in error, Martin Daly, as the employee of said Caroline W. Dobbins, acquired prior to the adoption of said ordinance, and as in impairment of the obligation of contracts made before the passage of said ordinance.

V.

That the Supreme Court of the State of California erred in deciding that the ordinance adopted by the city council of the City of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks

or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not an invalid ordinance as abridging the privileges and immunities of the said plaintiff in error, Caroline W. Dobbins, or the said plaintiff in error, Martin Daly, her employee, as depriving the said Martin Daly and his employer, the said Caroline W. Dobbins, of property rights acquired prior to the adoption of said ordinance, without due process of law.

VI.

In the case of Caroline W. Dobbins, the Supreme Court of the State of California erred in not determining that the said plaintiff in error, Caroline W. Dobbins, was entitled to relief in a court of equity enjoining the defendant, the City of Los Angeles, from enforcing, by a criminal prosecution, the said ordinance as invalid, and as infringing the said property rights of the said Caroline W. Dobbins.

VII.

In the case of Caroline W. Dobbins, the Supreme Court of the State of California erred in giving judgment for said defendant in said action and against the said plaintiff in error.

VIII.

In the case of Caroline W. Dobbins, the Supreme Court of the State of California erred in affirming the judgment of the Superior Court of the State of California therein.

IX.

In the case of Caroline W. Dobbins the Supreme Court of the State of California erred in not reversing the judgment

of the Superior Court of the State of California in said case and directing said Superior Court to enter a decree therein overruling the demurrer to the complaint therein and ordering that the said defendant be enjoined and restrained from enforcing the said ordinance against the said plaintiff Caroline W. Dobbins.

X.

In the case of Martin Daly, the Supreme Court of the State of California erred in not holding that the matters charged in the complaint against the said Martin Daly did not constitute a public offense by common law or under any ordinance of the city of Los Angeles, or any law of the State of California, or under any statute of the United States.

XI.

In the case of Martin Daly the said Supreme Court of the State of California erred in not holding that the said police court of the City of Los Angeles had no jurisdiction to issue a warrant for the arrest of the said Martin Daly.

XII.

In the case of Martin Daly, the Supreme Court of the State of Californa erred in not holding that the said defendant in error, Charles Elton, Chief of Police of the City of Los Angeles, had no authority to arrest or detain the said plaintiff in error, Martin Daly.

XIII.

The Supreme Court of the State of California erred in not discharging the said Martin Daly, plaintiff in error, upon the return of the writ of habeas corpus herein.

BRIEF.

I.

In passing upon a municipal ordinance, it is necessary to its validity that its provisions should be determined to be reasonable.

Town of Oxanna v. Allen, 90 Ala. 468.
Tugman v. Chicago, 78 Ill. 405.
Chicago v. Rumpf, 45 Ill. 90.
Toledo Railroad v. Jacksonville, 67 Ill. 37.
Lake View v. Tate, 130 Ill. 247.

II.

The determination by the legislative body of what is a proper exercise of the police power is not final nor conclusive, but is subject to the supervision of the courts, and what is a reasonable ordinance is a judicial, and not a legislative, question.

Covington Turnpike Co. v. Sanford, 164 U. S. 578, 592,
Lawton v. Steel, 152 U. S. 153.
Holden v. Hardy, 169 U. S. 366.
In re Smith, — Cal. —; 77 Pac. Rep. 180.
Ex parte Whitwell, 98 Cal. 73.
Ex parte Sing Lee, 96 Col. 354.
Tiedman on State and Federal Control, 1, p. 238.
Jew Ho v. Williamson, 103 Fed. 10, 17-20.

Weill v. Ricord, 24 N. J. Eq. 169.
Yates v. Milwaukee, 10 Wall. 497.
People v. Budd, 117 N. Y. 1.

CONTRA:

Dobbins v. City of Los Angeles, Tr. of record, fols. 59-65.

DISTINGUISHED.

Munn v. Illinois, 94 U. S. 113; and also
Maxwell v. Fulton, 119 Ind. 23.
Whittington v. Pope, 1 Har. & J. 236.
Cooley's Const. Lim. 6 Ed. page 247, *et seq.*

In these last three citations it is shown that the legislature is distinguished from a municipal council in enacting its police provisions and is not subject to review by the courts merely because their laws may be unreasonable.

III.

In determining the validity of an ordinance the objects and purposes sought to be accomplished are always scrutinized by the courts, and in so doing they are not limited to those matters which appear upon the face of the ordinance or of which they may take judicial notice, but may consider all the circumstances in the light of existing conditions.

Town of Oxana v. Allen, supra.
Tugman v. Chicago, 78 Ill. 405, 409.
Chicago v. Rumpff, 45 Ill. 90.
Toledo, etc. R. R. v. Jacksonville, 67 Ill. 37.
Lakeview v. Tate, supra.
Ex parte Patterson (Tex.) 58 S. W. Rep. 1011.
People v. Armstrong, 73 Mich. 288.
Wreford v. People, 14, Mich. 41, 46.

Cleveland Ry. Co. v. City of Connersville, 147 Ind. 277.
State v. Boardman, 93 Me. 73.
Corregan v. Gage, 68 Mo. 571.
Pieri v. The Mayor, 42 Miss. 493.
Town of Kosciusko v. Slomberg, 68 Miss. 469.
Crowley v. West, 52 La. An. 526.

IV.

The motives which actuate a municipal council in the adoption of ordinances are material as showing the objects and purposes for which the ordinances are adopted.

Yick Wo v. Hopkins, 118 U. S. 356.
In re Ho Ah Kow, Fed. Case No. 6546.
C. B. & Q. Railroad v. Chicago, 116 U. S. 234.
Dill. on Mun. Corp., 4th Ed. sec. 311.
State v. Cincinnati Gas Light Coke Co., 8 Ohio St. 262.

V.

The ordinance of the City of Los Angeles adopted on the 26th day of August, 1901, is invalid and not binding upon the plaintiffs in error as against their right to conduct a lawful business of erecting gas works and manufacturing gas for the following reasons:

1. It is in violation of the rights, privileges and immunities of a citizen of carrying on a lawful occupation within the City of Los Angeles.

(a) The business of erecting or maintaining a gas works is a lawful occupation.

Constitution of the State of California, Article XI, Sec. 19.

Ex Parte Johnson, 137 Cal. 115.
People v. Stevens, 62 Cal. 209.

(b) A municipality has not the power or right to impose additional burdens or terms or conditions to the exercise of rights created by the sovereign authority of the State in its Constitution. Restrictions in the exercise of these rights are not regulations and at least impair if they do not deny the exercise of the right.

Ex parte Johnson, supra.
Township of Summit v. N. Y. & N. J. Tel. Co., 57 N. J., Equity, 123.
City of Atlanta v. Gate City Gaslight Co., 71 Ga. 106.
Michigan Telephone Company v. City of Benton Harbor, 121 Mich. 512.
Wisconsin Telephone Company v. City of Oshkosh, 62 Wis. 32.
Appeal of Pittsburg, 115 Pa. St. 4.
Borrough of Millvale v. Evergreen Railway Co., 131 Pa. St. 1.
Harrisburg City Pass. R. R. Co. v. City of Harrisburg, 149 Pa. St. 465.
State v. Flad, 23 Mo. App. 185.
Hodges v. Telegraph Co., 72 Miss. 910.

2. This ordinance is void in that it is unreasonable because it does not describe the district to which gas works shall be confined by any geographical or natural boundary or by any reasonable designation.

3. This ordinance is invalid because it is an attempt on the part of the city council of the City of Los Angeles to define and make that a nuisance which is not a nuisance *per se*.

(a) Gas works are neither in their erection nor maintenance a nuisance *per se* and it is not within the power of the city council of the city of Los Angeles to pass an ordinance making that a nuisance which is not a nuisance *per se*, nor could such a declaration make it a nuisance unless it in fact had that character.

Yates v. Milwaukee, 10 Wall. 497.
C. R. I & P. R. R. v. Joliet, 79 Ill. 39.
Everett v. Council Bluffs, 46 Iowa 66.
Ex parte Sing Lee, 96 Cal. 354.
County of Los Angeles v. The Hollywood Cemetery Association, 124 Cal. 344.
Grossman v. Oakland, 30 Oregon 478.
Stockton Laundry Case, 31 Fed. 680.
In re Hong Wah, 82 Fed. Rep. 623, 624, 626.
Ex parte Whitall, 98 Cal. 73.
Wood on Nuisances, sec. 744.

(b) The power granted in the City Charter to *abate* nuisances does not give power to *prevent* except in those cases of nuisances *per se*, and those things which only become nuisances because of the method of their operation cannot be prevented and stopped under the power to abate until it has been demonstrated they are nuisances.

Lakeview v. Letz, 44 Ill. 81, 83.

VI.

The ordinance number 6779 of November 25th, 1901, was repealed by the ordinance number 7029 of March 3rd, 1902. The ordinances are on the same subject matter. The latter ordinance covers the whole subject matter of the earlier and will repeal the former.

23 *American and English Encyclopedia of Law*, 485.

VII.

The ordinance of March 3rd, 1902, is invalid for the reason that it is in violation of the vested rights acquired by the plaintiff in error, Mrs. Dobbins, by virtue of her purchase of land within the limits of the district within which it was lawful to erect gas works by the terms of the ordinance of August 26th, 1901, and by virtue of the permit granted to her by the Board of Fire Commissioners of the City of Los Angeles on the 22nd of November, 1901, under the existing building and fire ordinance.

(a) The rights acquired by said plaintiff in error were vested rights.

Calder v. Bull, 3 Dall. 394.
Farrington v. Tennessee, 95 U. S. 679.
Steamship Co. v. Jolliff, 2 Wall. 457.
Worth v. Cransen, 98 U. S. 118.
Classen v. Chespeake Guano Co., 81 Md. 258.
Roberts v. Brooks, 71 Fed. Rep. 914.
Baltimore Trust Co. v. Baltimore, 64 Fed. Rep. 153.
Lewis v. City of Newton, 75 Fed. Rep. 884.
Cleveland City Railroad Co. v. City of Cleveland, 94 Fed. Rep. 385.
City Railway Company v. Citizens' Street Railway Co., 166 U. S. 562.

(b) The ordinance of March 3rd, 1902, is void as depriving the said plaintiff in error of property without due process of law.

City of Chicago v. Netcher, 183 Ill. 104.
C. B. & Q. R. R. v. Chicago, 166 U. S. 234.
Frorer v. People, 141 Ill. 171.
Ramsey v. People, 142 Ill. 380.

Braceville Coal Co. v. People, 147 Ill. 66.
Cooley Const. Lim. 393.

VIII.

The ordinance of March 3rd, 1902, is not within the police power, nor is it a proper police regulation.

(a) The police power has reference to those things which affect the public health, the public safety, the public comfort, or the public morals.

Noel v. People, 187 Ill. 587.
City of Chicago v. Netcher, supra.
State v. Donaldson, 41 Minn. 74.
City of Indianapolis v. Consumers' Gas Trust Company, 140 Ind. 107.
Barthet v. City of New Orleans, 24 Fed. Rep. 564.
City of Buffalo v. Chadeayne, 134 N. Y. 163.
New Orleans Gas Company v. Louisiana Light Company, 115 U. S. 650.
Walla Walla v. Walla Walla Company, 172 U. S. 115.

DISTINGUISHED.

Beer Company v. Massachusetts, 97 U. S. 25.
Fertilizing Company v. Hyde Park, 97 U. S. 659.
Stone v. Mississippi, 101 U. S. 814.
Slaughter House Cases, 16 Wall. 36.
Butchers' Union Co. v. Crescent City Live Stock Landing Co., 111 U. S. 746.
Ex parte Lacey, 108 Cal. 326.
Barbier v. Connolly, 113 U. S. 27.
Knoxville v. Bird, 12 Lea. 121.
Davenport v. City of Richmond, 81 Va. 636.

(b) The provisions of Section 11 of Article XI of the

Constitution of the State of California is not a grant of the police power. It is simply an extension to counties, cities and towns of the right to exercise powers that are inherent in the legislature as the representative of the people; but it is in no sense an enlargement of that power.

Ex parte Campbell, 74 Cal. 20.
Ex parte Roach, 104 Cal. 272.
County of Los Angeles v. Hollywood Cemetery Assn., 124 Cal. 344.

IX.

A court of equity has power to restrain by injunction a municipality from instituting criminal proceedings when such criminal prosecutions are threatened under color of an invalid ordinance for the purpose of compelling the relinquishment of a property right.

Davis & Farnum Manufacturing Company v. Los Angeles, 189 U. S. 207.
Central Trust Company v. Citizens' St. R. Co., 80 Fed. Rep. 225; s. c. 82 Fed. 1.
Reagan v. Trust Co., 154 U. S. 326.
Southern Express Co., Mayor, etc., of Ensley, 116 Fed. 756.
Lottery Co. v. Fitzpatrick, 3 Woods, 222, Fed. Cases No. 8,541.
Springhead Spinning Company v. Riley, L. R. 6 Eq. 588.
Osborn v. United States Bank, 3 Wheat. 738.
Wood v. City of Brooklyn, 14 Barb. 425.
Manhattan Iron Works v. French, 12 Abbott's N. C. 446.

Rushville v. Rushville Natural Gas Co., 132 Ind. 575.
Davis v. Fasig, 128 Ind. 271.
Platte & D. Canal & Milling Co. v. Lee, Mayor, (Colo.) 29 Pac. Rep. 1036.
Smith v. Bangs, 15 Ill. 399.
Mayor of Baltimore v. Radecke, 49 Md. 218.
Cape May & L. R. Co. v. City of Cape May, 35 N. J. Eq. 409.
Los Angeles City Water Co. v. City of Los Angeles, 103 Fed. Rep. 711.
City of Atlanta v. Gate City Gaslight Co., 71 Ga. 196.
City of Austin v. Austin City Cemetery Association, 87 Tex. 330.
Port Mobile v. Louisville & N. Railway Co., 84 Ala. 115.
Smyth v. Ames, 169 U. S. 466, 517.
Detroit v. Detroit Citizens' Railway Co., 184 U. S. 368, 378.

X.

The plaintiff in error, Caroline W. Dobbins, has no remedy against the defendant in error for damages for the wrongful arrest of her employes or for the destruction of her business and property rights.

Steadman v. San Francisco, 63 Cal. 193.
Chope v. Eureka, 78 Cal. 508.
Doeg v. Cook, 126 Cal. 213.

XI.

It is not enough that the plaintiff has a remedy at law.

It must be as efficient and as prompt in its administration as the remedy in equity.

Boyce v. Grundy, 3 Peters 377.
Walla Walla City v. Walla Walla Water Co., 172 U. S. 1, 12.
Insurance Co. v. Bailey, 13 Wall. 616, 621.
Kilbourn v. Sunderland, 130 U. S. 505, 514.
Tyler v. Savage, 143 U. S. 79, 95.
2 Story Eq., Sec. 928.

XII.

Where a law under which a prisoner is held has been declared unconstitutional and where the unreasonableness and oppression of the ordinance is not apparent upon the face thereof, evidence in such cases will be admitted by a court of general jurisdiction upon habeas corpus showing existing conditions and for the purpose of determining whether a public offense has been committed.

Ex parte Smith, — Cal. —; 77 Pac. Rep. 180.
Ex parte Neilson, 131 U. S. 176.
Ex parte Lang, 85 U. S. 163.
Ex parte Siebold, 100 U. S. 176.
In re Coy, 127 U. S. 731, 758.
Ex parte Mayfield, 141 U. S. 107.
Yick Wo v. Hopkins, 118 U. S. 356.

ARGUMENT.

The judgments of the Supreme Court of the State of California which are called in question by these writs of error were supported by an opinion filed in the Dobbins case, and upon the authority of that opinion the judgments here sought to be reversed were rendered in both of these cases. It is therefore proper that we should present to this Court at this time this opinion. It is as follows:

This action was brought to obtain an injunction restraining the defendant, the City of Los Angeles, a municipal corporation, from enforcing certain ordinances of the city prohibiting the erection or maintenance of gas works within certain parts of said city. A demurrer to the complaint was sustained in the court below and judgment rendered for defendant. From the judgment plaintiff appeals.

On the 26th day of August, 1901, the city adopted an ordinance, No. 6663, by which it was provided that "it shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment, or manufactory, for the manufacture of gas; or any tank, reservoir, or other receptacle for the storage of gas, within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit" (and then follows a description of the district.) It was also provided that any person who should violate the above provision should be guilty of a misdemeanor, and upon conviction be punished by fine or imprisonment or both. On the 3rd day of March, 1902, the city adopted another ordinance No. 7029, amendatory of the said ordinance 6663. This second ordinance merely amends the first by changing the boundaries of the area within which, the erection and maintenance of gas works was prohibited. These two ordinances are the only ones necessary to be considered. The plaintiff was engaged in erecting

gas works within the territory in which the erection of such works was prohibited by the second ordinance and it is averred that, by procurement of the defendant, certain employees of plaintiff engaged in labor upon her said gas works have been arrested and prosecuted for a violation of said ordinance, and that defendant threatens to continue to arrest and prosecute her employees for such violation. The prayer of the complaint is that defendant be enjoined and restrained from enforcing said ordinances and from "prosecuting or proceeding with any prosecution commenced or to be commenced" under said ordinances against plaintiff or any of her agents or employees. There are other averments in the complaint which will be noticed hereafter.

The general contention of appellant that the ordinances in question are invalid and void because violative of the 14th amendment to the Federal Constitution, and of other constitutional guaranties State and Federal of the enjoyment of property, or vested rights, the equal protection of the law, etc., is not maintainable.

The ordinances were passed in the exercise of the police power which is fully granted to the city of Los Angeles by statutory law, by its charter, and by the constitution of the State. Its charter gives it power to suppress or prohibit all offensive places of business, and to regulate or prohibit explosives, combustibles, or inflammable material within the city, or any specified part thereof.

By the act of the State legislature of April 4, 1870, entitled "An act concerning gas works," (Stats. of 1869-70, p. 815) it is provided that cities "may also control the location and construction of works so that they may be erected on suitable locations to give the least discomfort or annoyance to the public." This act was expressly continued in force by subdivision 20 of section 19 of the political code. And by the State constitution itself, (art. XI, sec. 11) it is provided that "any county, city, town or township may make and enforce within its limits all such local, police, sanitary or other regulations, as are not in conflict with general laws." There is no doubt therefore, that the exercise of this police power belongs to the respondent within its territorial limits; and the only question is whether the adoption of the

ordinances in question was a legitimate exercise of it; for all property is held subject to that power. An ordinance obviously and undoubtedly foreign to any of the recognized purposes of the police power, and interfering with the ordinary enjoyment of the property would no doubt, be held by a court to be invalid. But where the ordinance is reasonably within a proper consideration of, and care for, public health, safety, or comfort, a court will not disturb the legislative act; it will not substitute its own views of what is proper in the premises for those of the legislative body. In *Munn v. Illinois*, 94 U. S. 113, the U. S. Supreme Court states the rule thus: If no state of circumstances could exist to justify a certain statute, then we may declare this one void because in excess of the legislative power of this State; but if it could, we must presume it did. Of the propriety of legislative interference, within the scope of the legislative power, the legislature is the exclusive judge." This rule is very fully discussed and declared in *Powell v. Commonwealth of Penn.*, 127 U. S. 617—the "oleomargarine" case. (See also, *Crowley v. Christianson*, 137 U. S. 87, and *Canfield v. United States*, 167 U. S. 518.) And it cannot be said judicially that volatile, inflammable, explosive and bad smelling gas, is not within the category of things which interfere with the public safety, welfare and comfort, and therefore beyond the reach of the police power. The exercise of this power is not confined to the regulation of only such interferences with the public welfare and comfort as come strictly within the common law definition of a "nuisance." (*Ex parte Lacey*, 108 Cal. 326; *Ex parte Schrader*, 33 Cal. 283.)

It is averred in the complaint that the said ordinances were adopted, not for the purpose of protecting public interests, but for the purpose of protecting and favoring a certain named company engaged in the manufacture and sale of gas in said city. But the motives which induce a legislative body to make a law cannot be considered in a judicial proceeding in which the validity of the law in question is involved. In Cooley's Constitutional Limitation, sixth edition, p. 231, it is said: "Although it has sometimes been urged at the bar that the courts ought to inquire into the

motives of the legislature where fraud and corruption were alleged, and annul their action if the allegation were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the governor in the exercise of the discretion vested in him exclusively. He is responsible for his acts in such a case, not to the courts, but to the people;" and numerous authorities are referred to which sustain the text. (See also, *Hing v. Crowley*, 113 U. S. 703.)

It is also averred that prior to the adoption of the second ordinance plaintiff had made certain contracts with third parties to furnish materials for and do labor on gas works which she was about to erect, and had purchased land to be used as a site for such works within the territory where the erection of such works, under the first ordinance was permitted, and had expended a considerable amount of money in building the foundation of her contemplated works, and in partly erecting the same; and that by the second ordinance the boundaries of the district were so changed as to put her said land outside of the territory where gas works were permitted. And it is further alleged that prior to the adoption of the second ordinance she had commenced to erect her works under a permit of the board of fire commissioners of said city in pursuance of the fire and building ordinances. And she contends, that even if the general principle relied on is not maintainable, these additional facts make the second ordinance invalid as an unwarranted interference with the enjoyment of property, an impairment of the obligations of the contracts, etc. But this contention cannot be maintained. The ordinance provides that "it shall be unlawful for any person to erect or maintain" gas works outside of the described district. This language clearly includes works in course of construction as well as those to be begun in the future; and under the authorities the exercise of the police power clearly covers prohibited buildings partly erected, although great hardship to the builder may follow. It is somewhat difficult to see exactly what is the character and significance of the alleged permit

from the fire commissioners. Appellant contends that it was an express contract with the city to allow her to erect and maintain her gas works. We do not think that this conclusion results from the averments of the complaint. At all events there was nothing in this permit which took away from the city the police power which it afterward exercised. The city could not thus estop itself from making and enforcing proper police regulations. In *Fertilizing Co. v. Hyde Park*, 97 U. S. 659, the legislature of the State had granted to plaintiff the privilege of manufacturing fertilizers in the village of Hyde Park and conveying the products through its streets, and plaintiff had expended $200,000 in constructing its plant; but it was held that notwithstanding these facts the village, by virtue of its police power, could prohibit the business and compel the plaintiff to abandon its works. In *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 672, the court says: "Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety, in the same sense, and to the same extent, as are all contracts and all property, whether owned by natural persons or corporations. Whatever therefore in the manufacture or distribution of gas in the city of New Orleans proves to be injurious to the public health, the public comfort, or the public safety, may notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by municipal ordinance passed under legislative authority." (See also *Barbour v. Connelly*, 113 U. S. 27; *Stone v. Miss.* 101 U. S. 814; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 750; *Ex parte Lacey*, 108 Cal. 326.)

Our conclusion is that the ordinances here involved are valid and that therefore the judgment should be affirmed. This view makes it unneccessary to consider the question elaborately discussed by council, to-wit, whether or not a court of equity will ever enjoin a criminal prosecution.

The judgment appealed from is affirmed.

McFARLAND, *J.*

We concur:

SHAW, *J.*

ANGELLOTTI, *J.*

LORIGAN, *J.*

HENSHAW, *J.*

After this opinion was rendered, a petition for rehearing was filed in the Supreme Court of the State of California, and on the hearing of that petition for a rehearing the following order was entered.

By the COURT: Rehearing denied, June 27, 1903, Beatty, C. J., Lorigan, J., Henshaw, J., dissenting; Vandyke, J., declining to act.

In the matter of the petition of the application of Martin Daly for a writ of habeas corpus the following opinion was rendered:

By the COURT: The only ground upon which the applicant could be discharged on this proceeding, is the alleged invalidity of certain ordinances of the city of Los Angeles. But in the recently decided case of *Dobbins v. City of Los Angeles, L. A.* No. 1330, (Cal. Dec. vol. 25, p. —) the validity of those ordinances was directly involved, and it was there held that the same are valid; and on the authority of that case the prayer of the petitioner is denied.

The petitioner is remanded and the writ is discharged.

A petition for rehearing was also filed in this case similar to the petition for rehearing in the Dobbins case and with a like result, as in that case.

The opinion filed by the Supreme Court of California overlooks the fundamental principles upon which our constitutional guarantees rest. The vital and controlling principles which underlie our right to seek redress here have been overlooked. The opinion of that Honorable Court commits practically to municipal authorities the conclusive decision which has been from time immemorial regarded, and correctly so we think, within the exclusive province of the judiciary; in other words, it is held that, in violation of the constitution, a municipal council is constituted a judicial tribunal from whose decision there is practically no appeal. The Supreme Court of California in the opinion of the Dobbins case quoted with approval from *Munn v. Illinois*, 94

U. S. 113, the following language and applied it to the case at bar: "If no state of circumstances could exist to justify a certain statute, then we may declare this one void because in excess of the legislative powers of this state; but if it could, we must presume it did." If that doctrine is to be accepted as controlling the construction of *municipal ordinances* and determining their validity, it imperils every vested right in every franchise conferred by the state or by any of its agents, and places it within the power of all municipal bodies to so arbitrarily and unreasonably restrict the exercise of all valid franchises as to render them in effect null and void. We submit that the more reasonable and correct doctrine is enunciated in that portion of the opinion where Mr. Justice McFarland says: "An ordinance obviously and undoubtedly foreign to any of the recognized *purposes* of the police power, and interfering with the ordinary enjoyment of property would no doubt be held by a court to be invalid." We are here to show that the *purposes* of these ordinances were not within the recognized scope of the police power and to call also to this Court's attention the fact that the court below made no effort to pass upon the *purposes* for which these ordinances were passed. The Court below recognized this principle when it said, "But where the ordinance is reasonable with a proper consideration of and care for the public health, safety or comfort, the court will not disturb the legislative act." It will also be observed that throughout the opinion there is not a single authority referred to which supports the proposition that a court possessing the unlimited judicial powers of the Court below must be confined, in its determination of the validity of an ordinance, to the face of the ordinance itself, no matter how speciously and ingeniously drafted in order to conceal its true purpose and object and its inevitable result as shown by the admitted facts in this case.

In determining the validity of an ordinance of this character, the particular circumstances of each particular case are to be considered by the Court, and it will never be limited in its inquiry to a consideration of those matters which appear upon the face of the ordinance only.

The effect of the conclusion reached by the Court below in their opinion is substantially to assert the doctrine that in determining the validity of an ordinance extrinsic facts running to its reasonableness in the particular case in question are not to be considered. It has always been recognized by every court in the United States that in passing upon a municipal ordinance, as contradistinguished from an act of the State Legislature, its reasonableness was necessary to its validity. No such limitation as this is placed upon the action of a State Legislature; and its acts, although unreasonable, if constitutional, and within its power to enact, are held valid. [See *Maxwell v. Fulton*, 119 Ind. 23; *Whittington v. Polk*, 1 Har. and J. (Md.) 236; Cooley's Constitutional Limitations, 6th Ed. page 197, *et seq*] *A by-law or ordinance of a municipal corporation, however, must be reasonable* even though the municipality be vested with power to legislate upon the subject in question. In support of the position taken by the Court below with reference to the presumption of the existence of a state of facts which would justify the legislation we are referred to *Munn v. Illinois, supra;* but that case involved the construction of a statute of the Illinois legislature limiting the charges for grain elevator service in that state, and it had nothing whatever to do with the mode of exercising police powers by municipalities. In passing upon the reasonableness of an ordinance courts will always consider the objects and purposes of the legislation and consider this in connection with the particular facts involved.

We will cite to this Court a few of the authorities which

constitute the overwhelming declaration of this rule in the United States and in each one of these cases cited the ordinance was directed at a subject within the police power and which looked fair and honest enough on its face, but when considered in the light of surrounding facts it was determined that the ordinances were, to say the least, unreasonable.

The Supreme Court of Alabama recognized the justice of the above rule. In *Oxanna v. Allen*, 90 Ala. 468, it was said, "The ordinance in question was, in our judgment, void for unreasonableness. * * * True, it has reference to a subject-matter within the corporate jurisdiction and the rule is that in such cases a municipal ordinance will be presumed reasonable *prima facie, unless the contrary appears* on the face of the law itself, *or is established by proper evidence.*"

The Supreme Court of Illinois, in *Tugman v. Chicago*, 78 Ill. 405, at page 409, said, "If one of the citizens of Chicago is permitted to engage in the business of slaughtering animals in a certain locality, an ordinance which would prevent, under a penalty, others from engaging in the same business would not only be unreasonable, and for that reason void, but its direct tendency *would be to create a monopoly*, which the law will not tolerate." And in the case at bar it is conceded by the demurrer that it was the purpose and object of the muncipal council in adopting the ordinance under review to maintain and foster the then existing monopoly of the gas business. (See also, *Chicago v. Rumpff*, 45 Ill. 90.)

An ordinance providing for the safety of the public by requiring a railroad to place a flagman at certain crossings is undoubtedly within the exercise of the police power; yet the Supreme Court of Illinois considered an ordinance of that character and held that in reference to the particular crossing in question it was unreasonable, as the railroad showed that they ran no trains past that crossing at night; that but

very few were run in the daytime; and that the neighborhood surrounding the crossing in question was a sparsely settled community. See *Toledo etc. Railroad v. Jacksonville*, 67 Ill. 37.

A case which approves this doctrine and the facts in which bear a significant resmblance to those in the case at bar is that of *Lakeview v. Tate*, 130 Ill. 247. The town of Lakeview provided that for the purpose of regulating the speed of railroad trains the town should be divided into two districts. In the first district the speed of passenger trains was limited to ten miles per hour (a subject undoubtedly within the police power); but in the second district no limitations upon the speed of passenger trains was placed. In considering the question of the reasonableness of the ordinance the court took cognizance of the locality and character of the portions of the town which were districted by the ordinance, and the opinion discloses and the real reason for the passage of the ordinance was that there were two rival railroads running to the City of Chicago from Lakeview; that one of the railroads, doubtless in high favor with the municipal authorities, ran its line in the district in which no limitation was placed upon the speed of trains, and that the other road, less favored in its association with the city council, ran through the district in which the ten-mile limit applied. The court considered the physical conditions existing in the two districts, recognized the fact that if one suburban road was prevented from running its trains at the same speed as its competitor under practically the same conditions, that an unlawful discrimination was being attempted by the muncipal council under the guise of an ordinance which was within the scope of the police power, and upon its face and without examining into the question of fact involved, seemed fair enough. The ordinance was held to be unreasonable and therefore void. On account of the

sound reasoning contained in this opinion and the very close analogy on the question of discrimination in the formation of districts, we respectfully urge a careful consideration of it by this Court.

We will content ourselves with merely referring to six other cases to the same effect:

Ex parte Patterson, 58 S. W. (Texas Rep.) 1011.
People v. Armstrong, 73 Mich. 288.
Wreford v. The People, 14 Mich. 41, 46.
Cleveland Ry. Co. v. City of Connersville, 147 Ind. 277.
Corregan v. Gage, 68 Mo. 541.
Pieri v. The Mayor, 42 Miss. 493.

In view of the principles which are established by the above cases, and having in mind that portion of the opinion of the court below which reads as follows, "An ordinance obviously and undoubtedly foreign to any of the recognized purposes of the police power and interfering with the ordinary enjoyment of property, would no doubt be held by a court to be invalid," we desire to call this Court's attention to the allegations of the complaint in the Dobbins case which are admitted by the demurrer in reference to those matters wherein the city might legitimately adopt police regulations affecting us, and which, as we have always conceded in this case, we would be glad to have it adopt if they applied, with reference to their restrictive provisions concerning the methods of manufacturing gas, to all the gas companies in this community.

The complaint alleges that the gas works in question are being constructed and are to be completed upon concrete foundations with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible. That the same are so firmly and substantially constructed

that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most improved pattern and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said plaintiff in error, Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery therein contained so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the said district and territory in which said gas works are located on the premises of plaintiff in error, Caroline W. Dobbins, or of any other of the inhabitants of the City of Los Angeles. (Transcript Dobbins case, folios 45, 46.)

That the territory surrounding the premises upon which these works are being built is and for some years has been a district devoted to manufacturing and commercial enterprises almost exclusively; that upon the premises purchased by plaintiff in error, Caroline W. Dobbins, on which to erect her gas works, there was situated a soap factory in full operation up to the time of such purchase; and that at all times since the first of August, 1901, there have been and now are in the district surrounding said plaintiff in error property and upon which the said gas works are being built, one wool-pulling factory, which is directly across the street from the gas works, three wineries, numerous oil wells in operation, an extensive iron foundry in active operation, a brass foundry and an extensive oil refinery, together with many other commercial and industrial enterprises which are of great value to any community and which are not usually conducted in exclusive residence portions of the city. (Transcript Dobbins, folios 44, 45.)

The fact is also alleged in this complaint and conceded by the demurrer that the act of passing the ordinance in question by the City of Los Angeles was not for the purpose of protecting any public interest or preserving any public right, but that it was suggested and formulated by the Los Angeles Lighting Company, its officers, agents, attorneys and employees, solely for the purpose of protecting the said Los Angeles Lighting Company in the enjoyment of that monopoly which has continued for upwards of ten years, as in said complaint alleged, and for the purpose of depriving said plaintiff in error of the privilege of pursuing her lawful undertaking and enterprise. (Transcript Dobbins folio, 43.)

It will also be observed by this court that from the admitted facts contained in the complaint, during the time of passage of all these ordinances the district had remained the same in the general character of its occupancy, and that all these manufacturing and industrial enterprises were then and are now being conducted within the district described by the first ordinance No. 6663, which created the district in which gas works might be erected, and into which we moved and spent thousands of dollars in complying with the municipal direction.

There can be no security for property rights in the State of California or under the constitution of the United States, which can be in any way affected by municipal ordinances if, for such an arbitrary, unreasonable and questionable discrimination as the facts above set forth disclose, we have no redress before this Court. We show that the works are not combustible; we show that the district is a locality devoted to manufacturing enterprises; that other business undertakings are being conducted there which, "if they do not amount to nuisances *per se*" are quite as obnoxious from the standpoint of public health, safety and comfort as a properly conducted gas works could be; we show that the district

created by the first ordinance, and in which we were lawfully building, is of the same general character as to occupancy as the new district, and geographically a portion of the new district which the council in the next ordinance adopted as the exclusive limits within which such enterprises could be carried on. It is a legitimate conclusion from the facts which we have stated that the council did not adopt this ordinance as a health measure nor to protect the safety of the community against the making of gas, but solely for the purpose of discriminating between this plaintiff in error and the Los Angeles Lighting Company, of driving this plaintiff in error out of her lawful business by denying her the right to conduct it, and of fostering and maintaining the monopoly so long enjoyed by the company at whose instigation these ordinances were adopted. If these facts do not completely establish the unreasonableness of these ordinances, we are unable to perceive what state of facts would justify a court in holding that the police power delegated to the municipality was unreasonably exercised.

In a paper delivered before the American Bar Association at its annual meeting in 1903 by Judge Le Baron B. Colt, U. S. Circuit Judge for the First Circuit, the doctrine of reasonableness is, with all the force of a judicial utterance, declared by him as follows: "It is held that the exercise by the legislature of its great powers in an unreasonable way is not due process of law, or equal protection of the laws, within the meaning of the Fourteenth Amendment. In reaching this position, it became necessary for the court to lay down a principle which is far-reaching and fraught with momentous consequences, namely, that the question of what is reasonable is a judicial, and not a legislative, question. As this question was first left by the court in *Munn v. State of Illinois, supra*, it might have been supposed that it was for the legislature to determine what is reasonable. In the subsequent case, however, of *Chicago*

Railway Company v. Minnesota, 134 U. S. 418, it was decided that the legislature could not authorize the imposition of unreasonably low rates, since such action would deprive railroads of their property without due process of law. And in later cases it has been authoritatively adjudicated that the question of what is reasonable is for the court, and not for the legislature. In *Covington Turnpike Company v. Sanford, supra*, the court declared:

" 'There is a remedy in the courts for relief against legislation establishing a tariff of rates which is so unreasonable as to practically destroy the value of the property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such act of legislation to be in conflict with the constitution of the United States, as depriving the companies of their property without due process of law, and as depriving them of equal protection of the laws.'

"The paramount inquiry by the Supreme Court in all cases involving the exercise of the police power is whether the action of the legislature is reasonable under the circumstances, or an arbitrary and unreasonable interference with individual liberty. An admirable summary of the court's views on this important subject is found in *Lawton v. Steele*, (152 U. S. 133.)

" 'To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.'

"In the close of the opinion in *Holden v. Hardy*, (169 U. S. 366), after an elaborate review of the cases and underlying principles, the Court said:

"'The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class.'"

The same doctrine has been extended by this Court to the executive branch of the government (*Yick Wo v. Hopkins*, 118 U. S. 356) where the petition for the writ set up matters which did not appear upon the "face of the ordinance," and which led the Court to the conclusion that the ordinance was invalid because of its unequal and partial enforcement.

The Supreme Court of the State of California since the rendering of the opinion in the Dobbins case above referred to, seems to have come to another conclusion than that annunciated in the opinion in the Dobbins case in reference to the power of the courts to judge as to whether an ordinance or an act of the legislature is a reasonable restraint upon the constitutional right of a citizen to pursue any trade, business or vocation which in itself is recognized and useful in a community, and they have declared themselves, in language not to be misunderstood, that *it is always a judicial question if any particular regulation of such a right is a valid exercise of the police power.*

In an opinion rendered by that Court on the 30th day of May, 1904, in the case of *Ex parte Smith* on habeas corpus, the following opinion was rendered:

HENSHAW, J. The petitioner is in custody for the alleged violation of a criminal ordinance of the county of Los Angeles, making it a misdemeanor to erect or maintain gas works, gas holders, gas tanks, etc., within a boundary fixed in the ordinance. Before the passage of the ordinance, petitioner and others had erected the gas works within the district and were supplying gas to consumers, inhabitants of the cities of Pasadena and Los Angeles. After his works were so in operation the ordinance in question was adopted.

Its effect, if valid, is to suppress his business. In his petition he set up, with other matters, that the district within which it is declared to be illegal to erect or maintain gas works is a sparsely settled rural community lying between the cities of Los Angeles and South Pasadena on the south and the city of Pasadena and the city of Los Angeles upon the north, through the center of which runs a wash which is known as the Arroyo Seco. This wash is a sandy, rocky waste, between 200 and 300 yards in width, and constitutes 95 per cent. of the district described in the ordinance. In the immediate vicinity of the gas works there are no dwelling houses, none nearer than a distance of about 300 yards, and the whole district contains only 15 places of habitation. It is further alleged that the works are safely and securely constructed, so as to be free from danger from leakage or explosion of gas; that the gas made is such as is ordinarily distributed to consumers in the various cities of the state; that it is impossible, owing to the secure method of construction, for any odors to escape; and that the works as constructed and operated do not and cannot injuriously affect the health, safety, welfare, or comfort of the citizens of the county of Los Angeles, or of any of them. Other matters are set forth, touching the motive of the board of supervisors in passing the ordinance; it being herein asserted that it was passed to perpetuate the monopoly of another gas company. The ordinance itself is fully set forth in the petition.

It being within the powers of the board of supervisors in proper cases to regulate, or even to prohibt, the manufacture of gas within prescribed limits, this ordinance upon its face would appear to be innocuous and valid. It became necessary, therefore, for the pleader in his petition to set forth the matters *de hors* the ordinance, by virtue of which he contends that the ordinance is unreasonable, oppressive and void. Upon the issuance of the writ the constable made the return contemplated by law, showing that he held the petitioner under a criminal complaint and warrant of arrest upon the charge of violating the ordinance. He further made return that he had no information or knowledge of the other facts set up in the petition for the purpose of showing

its unreasonableness, and the case was submitted on the theory that those alleged facts are true. Under our practice, upon the filing of the return, the petition is treated as a traverse to it. Then, if any of the matters in the petition, so treated as a traverse to the return, are denied, it is incumbent upon the person to whom the writ is addressed to join issue upon them. In the absence of such issue joined, the facts set forth in the petition will be taken as true. So, in this case, the facts averred will be considered as admitted.

It will not be disputed that the business, here sought to be prohibited is not only legitimate and useful, but even necessary, to our present civilization. Moreover, under the very terms of our Constitution, it is a recognized lawful occupation. Const. art. 11, sec. 19. The county of Los Angeles, therefore, has no power to prohibit the manufacture of gas, though it may, in the legitimate exercise of its powers, regulate its manufacture and the places thereof. Upon the other hand, the right of cities and counties within this state to pass ordinances, in the exercise of the police power, comes direct from constitutional grant. Const. art. 11, sec. 11. It is by virtue of this constitutional grant that the respondent argues that courts in construing the validity of the ordinance will take into consideration only the face of the ordinance and such facts as are within the judicial cognizance of the court, and herein reliance is had on the language of the Supreme Court in *Munn v. Illinois*, 94 U. S. 113, which declares: "If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the state; but, if it could, we must presume it did. Of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge." But, running current with this principle, and to be read with it, is one of equal importance, namely, that when the police power is exerted to regulate a useful business or occupation, the legislature is not the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue any trade, business, or vocation, which in itself is recognized as innocent and useful to the community. It is always a judicial question if any particular regulation of

such right is a valid exercise of police power, though the power of the courts to declare such regulation invalid will be exercised with the utmost caution, and only when it is clear that the ordinance or law declared void passes the limits of the police power, and infringes upon rights guaranteed by the Constitution. *Ex parte Whitwell*, 98 Cal. 73, 32 Pac. 870; 19 L. R. A. 727, 35 Am. St. Rep. 152. Indeed, the Supreme Court of the United States, in cases later than that of *Munn v. Illinois*, has set at rest any doubt that might exist as to the meaning of the language employed in the earlier case. In *Lawton v. Steele*, 152 U. S. 133, 137, 14 Sup. Ct. 499, 501, 38 L. Ed. 385, it is said: "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts." And again in *Holden v. Hardy*, 169 U. S. 366, 398, 18 Sup. Ct. 383, 390, 42 L. Ed. 780, the court says: "The question in each case is whether the Legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class."

As has been said, there must always be left a large discretion in the legislative body, with the exercise of which the courts will not, and have no desire to, interfere. Nor will they in any event interfere, except where the case be plain that needless oppression is worked and constitutional rights invaded. But courts are not limited in their inquiry to those cases alone, where such a situation is shown upon the reading of the statute. They will consider the circumstances in the light of existing conditions. In city ordinances, as distinguished from county ordinances, the inter-

est and requirements for protection of a thickly settled and growing community will often be widely different from those of sparsely settled and thinly inhabited rural districts. An ordinance limiting, regulating, or even prohibiting, in a certain district within the corporate limits of a city, may be perfectly reasonable, where like limitations, restrictions and prohibitions as to some district within the county, arbitrarily carved out, would be oppressive and unreasonable in the extreme. Owing to the peculiar conditions existing in cities, courts are not keen to question the wisdom of the legislative exercise of their police powers; but, as the same conditions do not exist in the country, county ordinances, passed in the exercise of the same power, may well be scanned with more critical eye. And, as it must happen in the case of many of these ordinances that the unreasonableness and oppression is not apparent upon the face thereof, evidence in such cases will be admitted to show the existing conditions. But this evidence will not go to motive. If the conditions justify the enactment of the ordinance, the motives prompting its enactment are of no consequence. If the conditions do not justify the enactment, the inquiry as to motive becomes useless. This is but in accordance with the well-settled rule, and for that reason the allegations touching the motive of the board of supervisors in passing the ordinance here under consideration have been and are entirely disregarded. But in support of the proposition above declared, that the conditions and circumstances upon which the ordinance bears are proper subjects of evidence, may be cited *Yick Wo. v. Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220; *Tugman v. Chicago*, 78 Ill. 405; *Oxanna v. Allen*, (Ala.) 8 South. 79; *People v. Armstrong*, 73 Mich. 288, 41 N. W. 275; 2 L. R. A. 721, 16 Am. St. Rep. 578; *Ex parte Patterson* (Tex. Civ. App.) 58 S. W. 1011, 51 L. R. A. 654; *Cleveland Railway Co. v. Connersville* (Ind. Sup.) 46 N. E. 579, 37 L. R. A. 175, 62 Am. St. Rep. 418; *Pieri v. Mayor, etc., of Shieldsboro*, 42 Miss. 493; *Town of Kosciusko v. Slomberg*, 68 Miss. 469, 9 South, 297, 12 L. R. A. 528, 24 Am. St. Rep. 281; *Corrigan v. Gage*, 68 Mo. 541.

When, finally, we come to apply these principles to the

ordinance in question, the need of discussion is at an end. It is manifest that the ordinance is unreasonable and oppressive, works an invasion of the petitioner's constitutional rights, and is therefore void. The ordinance being void, the criminal proceedings against petitioner founded upon the ordinance are likewise void.

It is therefore ordered that the petitioner be discharged from custody.

We concur: McFARLAND, J.; LORIGAN, J.; BEATTY, C. J.

SHAW, J. I concur in the opinion of Justice HENSHAW, and in the conclusion reached by him. The Court will take judicial notice of the fact that the County of Los Angeles is a large territory, consisting of several thousand square miles, large portions of which are very sparsely settled, and within which are a number of cities and villages, ranging in population from over 100,000 to a few hundred, and many districts of thickly settled farming communities. It appears from the face of the ordinance that the Board of Supervisors selected from all this territory, having these varying conditions, a small district, comprising but 200 or 300 acres, lying between the cities of Pasadena and South Pasadena on the one side and the City of Los Angeles on the other, and, ignoring the welfare and comfort of all the other territory of the county outside of incorporated cities, made it unlawful to erect or maintain gas works within this particular district. Another fact, so obvious that I think the Court can either take judicial notice of it or assume it to be true, is that there are very many other districts within the county of equal or greater extent, within which the erection or maintenance of gas works would be equally detrimental to the inhabitants thereof. It is admitted that at the time this ordinance was passed the petitioner and others acting with him had already, at great expense, erected gas works in this district, wherein they were manufacturing gas for sale and distribution to the public, and that the district is sparsely settled, having no places of residence within 300 yards of the gas works, and only 15 in all. Under these circumstances I think the Court is justified in holding that the ordinance in question was

manifestly intended to prohibit and suppress the particular business of the petitioner; that it was not a reasonable or *bona fide* exercise of the police power for the welfare and comfort of the inhabitants of the district or of the county, but an attempt, under color of the police power, to create an unjust, arbitrary and unreasonable discrimination against the enterprise in which the petitioner was engaged; and that for that reason it is unconstitutional and void.

I concur: ANGELLOTTI, J.

The motives which actuate a municipal council in the adoption of ordinances are material as showing the objects and purposes for which the ordinances were adopted.

The paragraph of the opinion of the Court below which is devoted to a discussion of the materiality of our allegations concerning the motives which actuated the municipal council of the City of Los Angeles cites as authority for the position taken Cooley's Constitutional Limitations and the case of *Soon Hing v. Crowley*, 113 U. S. 703. As to the correctness of the general proposition enunciated by Judge Cooley in the quotation referred to by that Court, we have no doubt, but the principle laid down by him and the cases cited in support of it will, upon an examination, be seen to relate to a case in which a valid law enacted with full power by a *legislative body* is attacked solely on the ground that the motives of that legislative body were improper. We have never in this case contended for any different principle of law. We recognize that if a state legislature having full power to enact a valid law does so under the influence of motives, no matter how improper or illegal, the law itself will be valid. What we do say, is that if a *quasi legislative body of a municipal corporation* enacts an ordinance which has for its purpose an object which in itself is not recognized by law, the motives actuating such quasi legislative body may be shown

in order that "the purpose and object" of the enactment may be determined so that the reasonableness of that purpose and object may be ascertained. In support of this proposition we cite this Court to Cooley's Constitutional Limitation (6th Ed.) page 247, where it is said: "And a by-law which assumes to be a police regulation, but deprives a party of the use of his property without regard to the public good under the pretense of the preservation of health, when it is manifest that such is not the object and purpose of the regulation, will be set aside as a clear and direct infringement of the right of property without any compensating damages." If, in our presentation of this question to this Court, we use the term "motive," in reference to the influence which was exerted upon the municipal council of the City of Los Angeles, it is not employed with the significance attached to it that is given by the Court below. All we say now, and all we have ever meant to say, is that as evidence of the purpose of municipal legislation it is competent to show that the municipal legislature desired and intended to discriminate between different classes of persons or different persons in the same class. We think we have established, by the cases cited under the last point, the fact that if an ordinance in its effect accomplishes unreasonable results the ordinance is invalid, and the safest guide to determining the effect of an ordinance such as the one under consideration is, we think, first, its actual operation, and, second, facts which show that the municipal authorities intend that it should operate in the unjust and discriminatory way in which it does. It is probably true that for the enactment of an unjust and discriminatory measure by a municipal corporation one remedy is to be found at the polls, but the case of *Soon Hing v. Crowley, supra,* cited in this connection by the Court below, was on this very proposition overruled by *Yick Wo v. Hopkins,* 118 U. S. 356. There an ordi-

nance of the City and County of San Francisco was under consideration. The ordinance provided that it should be unlawful to maintain and carry on laundries in certain designated buildings in said city. After practically holding that the ordinance on its face was a good ordinance, and that the subject of the legislation was within the police power, this Court discussed a question which comes very close to the motives of municipal legislatures in enacting laws. This Court said: "In the present cases we are not obliged to reason from the probable to the actual and pass upon the validity of the ordinance complained of as tried merely by the opportunities which their terms afford of unequal and unjust discrimination in their administration, for the cases present the ordinances in actual operation and the facts shown establish an administration directed so exclusively against a particular class of persons, as to warrant and require the conclusion that *whatever may have been the intent of the ordinance as adopted*, they are applied by the public authorities charged with their administration, and thus representing the state, with a *mind so unequal* and *oppressive* as to amount to a practical denial by the state of that equal protection of the laws, which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment of the Constitution of the United States. Though the law itself *be fair on its face* and *impartial in its appearance*, yet, if it is applied and administered by public authority with an *evil eye* and an *unequal hand* so as to practically make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. * * * It appears that both petitioners have complied with every requisite deemed by the law or by the public officers charged with its administration, necessary for the protection of neighboring property from fire or as a protection against injury to the public health. No reason whatever, except the *will of the supervisors*, is assigned why they should not be permitted to carry on in the customary manner their harmless and useful occupation on which they

depend for a livelihood, and while this consent of the supervisors is withheld from them and from two hundred others who have complained, all of whom happen to be Chinese subjects, eighty others not Chinese subjects, are permitted to carry on the same business under similar conditions. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists, except hostility to the race and nationality to which the petitioners belong, and which, in the eye of the law, is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is *a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution.*" (See also *Matter of Ho Ah Kow*, Federal case No. 6546. Opinion by Mr. Justice Field.)

Will the law justify and sustain an ordinance which, though more adroitly drawn and speciously framed, brings about the same discrimination between citizens which is so unsparingly condemned in the case above cited? Can the conclusion be resisted that in the case at bar the plaintiffs in error have been denied that equal protection of the law which is assured them by the provisions of the Federal Constitution? This Court will not assert that an ordinance, which was framed solely for the purpose of driving this plaintiff in error, Mrs. Dobbins, out of a lawful business, is to be upheld merely because the object and purpose of its adoption, which we have shown, and which is admitted by the demurrer, was an improper one, could not be inquired into if the measure under consideration had been adopted by a state legislature, unhampered by the limitation that its enactment should be *reasonable*.

So far has this Court gone in preventing discriminatory legislation that it has extended the above doctrine to all branches of the government, executive, legislative and judicial, and held that where an agent of the state, in whatever department, violates the Fourteenth Amendment of

the Constitution and discriminates between citizens, it is the act of the state itself, and therefore void. See *C. B. & Q. R. R. v. Chicago*, 166 U. S. 234, and cases there cited.

The Court below decided that it is a proper exercise of the police power to regulate the manufacture of gas. This proposition we have never controverted, but have always expressly admitted. What we do say, is that an ordinance within the police power, if unreasonable, if prohibitive, if passed for the purpose of sustaining a monopoly and discriminating between citizens in violation of the Fourteenth Amendment to the Federal Constitution, is invalid and of no effect, even though the general subject covered by the ordinance is one within the police power of a municipality to regulate.

The Act of the State Legislature of California of April 4, 1870, entitled "An Act concerning Gas Works," cannot limit the effect of the constitutional provision.

The act above referred to (Statutes of 1869 and 1870, page 815) is referred to by the Court below as conferring power upon the municipality to "control the location and construction of works so that they may be erected on suitable localities to give the least discomfort or annoyance to the public." The act itself, and Subdivision 20 of Section 19 of the Political Code continuing it in force, were both adopted long prior to the constitutional amendment. There are other rights and privileges conferred upon the municipality by that statute which would, if permitted to prevail at this time, undoubtedly override the Constitution. We are not aware of any reason why, under that statute of 1870, a gas company could not be granted a limited franchise by a municipality to distribute gas to the citizens of the city for the sole purpose of illumination and prohibiting the gas company from selling or collecting any tolls or

rates for gas used by the citizens for any other than illuminating purposes. Yet, the case of *ex parte* Johnston *supra* establishes the rule that, since the adoption of the Constitution, any attempt on the part of the city to limit the exercise of the franchise thereby conferred is absolutely void. We do not think that a fair construction of that portion of the act of 1870 referred to by the Court below will result in sustaining the right to arbitrarily and without any reason locate the works in one portion of a city, and then, when the works are half built, recall its direction as to location, change its municipal mind, as to where the best place to locate them may be, compel the abandonment of the property and the loss of the investment already made, simply because the act says that the city may in the first instance locate; and yet, that is exactly what was done to this plaintiff here. If the act of 1870 is still in existence and can override a constitutional provision adopted ten years afterwards, it amounts merely that they may provide one location for it and after that they may keep changing the locations after large sums of money have been spent on them, and continue so to do until the humble supplicant has been disheartened and financially ruined.

We contend that this act of April 4th, 1870, is not in full force, for the reason that the act itself and the act continuing it in force was adopted for the purpose of giving to individuals and corporations the privilege of supplying a municipality with gas under conditions that might be prescribed by municipal authorities as to the use of the streets and thoroughfares thereof, and that the right to designate the place within said city limits where gas works should be erected was simply a condition annexed to the license; and that by the adoption by the people of the State of California of Section 19 of Article XI of the Constitution of that State in 1879, they by implication repealed the act

of the Legislature of April 4th, 1870, by granting a franchise independent of the consent of the municipality. Under the present Constitution the necessity of the provisions of that act as to securing the franchise from the municipality no longer exist, and the right of the municipality to impose as a condition of the grant the determination of the location of the gas works has been abrogated.

By the people of the State of California in their Constitution giving to every individual or corporation organized for that purpose the use of public streets for the purpose of laying down pipes and conduits therein for the purpose of supplying the municipality with gas, they impliedly repealed previous acts of the Legislature covering and intended to cover the same subject. In the Constitution there are no conditions to the grant. The people of the State of California by the adoption of the Constitution chose to take away from the municipality the power to grant or refuse permission to use the public streets with or without any condition whatsoever. (*Ex parte Johnston, supra, People v. Stephens*, 62 Cal. 209.) And the Constitution having given this right to use the public streets and thoroughfares of the municipality, it carried with it the implied right to any individual to erect and maintain gas works at any place within the limits of the municipality which the individual might select; and it is submitted that if the City Council have authority to pass a law limiting the district in which it shall be lawful to erect gas works, that by continuous limitation and exercise of that power they could abrogate and nullify this provision of the Constitution of this State.

The people of the State of California, with a law upon the statute books authorizing the municipality to grant the privilege to individuals to use the public thoroughfares for the purpose of supplying the cities with gas, coupled with the right to control the place of the location of the gas

works, chose to take away from the municipality any voice in the matter, and by an absolute constitutional grant gave to every individual or corporation organized for that purpose the right to use the public streets without any condition whatsoever as to the place or places in which the gas works should be erected.

Further on herein we state fully our position concerning vested rights, and will not discuss that point here further than to say that the authority referred to by the Court below, *Fertilizing Company v. Hyde Park*, 97 U. S. 659, merely holds that the State cannot estop itself from exercising its police power in a proper case. A perusal of the opinion will show that the nuisance abated in that case was of the most extreme type imaginable, and the principles there enunciated support the contention that we have always advanced here, that when our gas works in fact become a nuisance to such an extent that their operation nauseates the inhabitants of the surrounding territory and, in addition to rendering life unbearable in their immediate vicinity, cause sickness and disease, the State may prevent their further operation; but until our works become a nuisance in fact, the municipality cannot anticipate, with the aid of their imagination, that that condition will inevitably arrive. But without regard to the question as to whether we have any vested rights or not which protect us from the exercise of the police power, we do contend that whether in violation of the Constitution or in the exercise of the power sought to be conferred by the Act of 1870, the municipality cannot, after having designated certain property upon which we should build our works, revoke that designation and, without any reason being shown for it, deny us the privilege of operating works which have been nearly completed under their express direction and control, and that, on the theory, not that the works themselves will in

any way affect the health, safety and welfare of the community, but because the gas, when made, may prove injurious to the public health and safety.

We have thus far discussed the opinion rendered by the Court below in rendering the judgments, to reverse which these writs of error are prosecuted. We desire now to discuss the questions which are presented directly by the assignment and specification of errors herein.

FIRST: THE ORDINANCE OF AUGUST 26, 1901, IS A VOID AND INVALID ORDINANCE FOR THE FOLLOWING REASONS:

1. It is in violation of the rights and privileges and immunities of a citizen to carry on a lawful occupation within the City of Los Angeles.

The ordinance provides that it shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained any works, establishment, manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles outside of the limits of the described district. We contend that this is in violation of our rights as guaranteed to us by the Constitution of the State of California and by the Fourteenth Amendment to the Constitution of the United States.

The Constitution of the State of California, Section 19, Article XI, provides that "In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this state, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes

and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof."

It is in the record of these cases that there are no public works owned or controlled by the City of Los Angeles for supplying the same with artificial light.

In reference to this provision of the Constitution of the State of Caliifornia, the Supreme Court of the State of California, *ex parte Johnston,* 137 Cal. 115, said:

> "In *People v. Stephens,* 62 Cal. 209, the above section was construed by this Court, and was held to be a direct grant from the people to the persons therein designated, of the right to lay pipes in the streets of a city for the purposes specified, without waiting for legislative authority, or being subject to any restrictions from that branch of the government, the Court saying, with reference to the privilege of laying pipes in the public streets and thoroughfares of any city: "That privilege is expressly granted by the section of the constitution cited, subject to the direction of the Superintendent of Streets or other officer in control thereof, and under such general regulation as the municipality may prescribe for damages, and indemnity for damage, and upon the condition that the municipal government shall have the right to regulate the charges thereof." The only limitations upon this privilege are those contained in the language in which it is granted, viz., that the work shall be done "under the direction of the Superintendent of Streets, or other officer in control thereof," and "under such general regulations as the municipality may prescribe for damages and indemnity for damages." Upon a compliance with these conditions any individual or company duly incorporated for such purpose is given the privilege "of using the public streets and thoroughfares thereof, and of

laying down pipes and conduits therein, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes." The municipality may prescribe regulations "for damages and indemnity for damages," but these regulations must be "general," i. e., uniform in their application to all who may desire to exercise the privilege.

The designation of "damages and indemnity for damages" as the subject upon which the municipality may prescribe regulations in regard to laying the pipes is a limitation upon its authority over the matter, and a prohibition from prescribing regulations upon any other subject connected with the exercise of the privilege. When the sovereign authority of the state, either in its constitution or through its legislature, has created a right and expressed and defined the conditions under which it may be enjoyed, it is not within the province of a municipality where such right is sought to be exercised or enjoyed, to impose additional burdens or terms as a condition to its exercise. The constitution does not authorize the municipality to require a permit as a condition upon which the pipes may be laid in its streets, and its claim of a right to require a permit includes the right to refuse one, and the right to annex one condition to the exercise of the privilege implies the right to annex others which may, at least, impair if not in fact amount to a denial of its exercise. The provision that the work is to be done under the direction of the Superintendent of Streets gives all the protection for the use of the streets that could be obtained under a permit; and, under the provision authorizing the municipality to prescribe regulations for damages and indemnity for damages, the city will be fully protected against any pecuniary loss or detriment. Under the statutes of New Jersey any telephone company was authorized to use the public roads and highways on the line of its route, for the purpose of erecting poles thereon to suspend its wires and other fixtures,

upon first obtaining the consent of the owner of the soil, with the proviso that the use of the public streets in any incorporated cities and towns of the state should be subject to such regulations and restrictions as might be imposed by the corporate authorities of said cities and towns. The authorities of the township of Summit passed an ordinance that no wire should be stretched across any public street without the permission of the township committee. In an action to restrain a telephone company from stretching its wires across certain streets of the township, the Court held that this ordinance was not a "regulation or restriction" under the statute and was therefore, invalid, saying: "A right to prevent the use of the streets for suspending wires, unless previous consent is obtained, if such right be lawfully conferred, authorizes a refusal to consent at discretion and confers a virtual power of prohibition. The right to the use of the streets has been expressly granted by the legislature, and the power to prohibit or interdict this use so granted cannot be inferred from the declaration in the proviso annexed to the grant, that the use should be subject to such regulations and restrictions as may be imposed. The restrictions intended in such a proviso must be held to be restrictions in the nature of regulations, and not restrictions which shall prohibit the use, or impose new conditions to the power to exercise the franchise." (*Township of Summit vs. N. Y. & N. J. Tel. Co.*, 57 N. J. Equity, 123.) A charter was granted to a gas company by the legislature of Georgia, in which it was authorized to use the streets of the City of Atlanta, for laying its pipes and fixtures therein, with the proviso "that the public thoroughfares shall at no time be unnecessarily interrupted or impeded by the laying down or erection thereof, and that said streets shall not be thereby injured, but shall be left in as good state and condition as they were before the laying down of said pipes." The City of Atlanta having passed an ordinance requiring any person who desired to excavate any street for the purpose of laying gas

pipes, or for any other purpose, to procure a written permission therefor from the City Engineer, under the penalty of fine and imprisonment, the gas company obtained an injunction against any interference with it on the part of the city authorities in laying the pipes in the streets, and the same was affirmed on appeal, the Supreme Court saying: "The permission of the City of Atlanta was not required to enable the complainant to exercise its franchise. It certainly was not made a condition by its charter. This was not the contract into which it entered with the state, and it would appear anomalous if a subordinate power could impose terms which the superior did not see proper to impose." (*City of Atlanta vs. The Gate City Gaslight Co.*, 71 Ga. 106.) The same principle has been followed elsewhere. (*Michigan Telephone Company vs. City of Benton Harbor*, 121 Mich. 512; *Wisconsin Telephone Company vs. City of Oshkosh*, 62 Wis. 32; *Appeal of the City of Pittsburg*, 115 Pa. 4; *Borrough of Millvale vs. Evergreen Railway Co.*, 131 Pa. 1; *Harrisburg City R. R. Co. vs. City of Harrisburg*, 149 Pa. 465; *State vs. Flad*, 23 Mo. App. 185; *Hodges vs. Telegraph Co.*, 72 Miss. 910.) In *Borrough of Millvale vs. Evergreen Railway Co., supra*, the court said: "The power of the defendant in the exercise of its franchise is altogether independent of the Borrough, and is of just as high and authoritative origin as the right of the Burrough to exist at all. The rights of both are derived from the same source, to-wit: the legislative power of the commonwealth, and the company is not subject to the slightest obligation to go to the Borrough for consent to exercise any part of its corporate franchise. Any other doctrine would subordinate the corporate franchise of the defendant to the will of the Borrough council, and cannot be sanctioned for a moment."

The ordinance in question is not an exercise of the police power, nor can it be justified under that authority. The exercise by a municipality of the police power over its streets is limited to the protection of the pub-

lic in their use of the street and does not include a limitation upon their use for any legitimate purpose. The highways of a state, including the streets in its cities, are under the control of the people of the state, and in this state the people have declared in their constitution that the streets of a city may be used for laying pipes therein for supplying its inhabitants with gaslight. Under the provision that the work shall be done "under the direction of the Superintendent of Streets, ample protection is afforded to the inhabitants of the city against any unnecessary encroachment or hindrance in their use of the streets.

The suggestion on the part of the respondent that it is the purpose of the corporation herein to supply gas through its pipes for other purposes than light, even if founded upon fact, does not deprive it from exercising the right conferred upon it by the constitution, or authorize the municipality to prevent it from enjoying that right. Even though the pipes when laid may be available for other purposes than supplying gaslight, the corporation is not thereby deprived of the right which the constitution has given it to lay its pipes in the streets, nor can it be required as a condition of exercising that right to declare that the gas to be supplied by it shall be used exclusively for illumination, or is to be supplied solely for such use."

The full scope and effect of the foregoing provision of the Constitution of the State of California is thus given effect by the decision of the Supreme Court of California. But if the City of Los Angeles has within itself a power to prescribe a district in which it shall be unlawful to erect gas works, it has it within its power to so continue to limit that district until it shall say that within the City of Los Angeles there shall be no works erected or maintained for the manufacture of gas, and thus in effect nullify the grant given by the Constitution that a person should have the right to use the streets for supplying gas by destroying the implied right that follows therefrom to manufacture gas

for the purpose of supplying the inhabitants of the municipality with the same.

If the City of Los Angeles has the power by thus prescribing the limits of a district in which no works shall be erected for the manufacture of gas, it must follow that other municipal corporations within the County of Los Angeles can do likewise, and also the Board of Supervisors, and thus make it impossible for any person to erect gas works within the County of Los Angeles, notwithstanding those provisions of the Constitution of the State of California in reference to the use of the streets for the purpose of laying pipes therein. This cannot be done.

As was said in the case of *ex parte Johnston, supra,* "When the sovereign authority of a State either in its Constitution or through its legislature has created a right, and expressed and defined the conditions under which it may be enjoyed, it is not within the providence of a municipality where such right is sought to be exercised or enjoyed to impose additional burdens as a condition to its exercise * * * and the right to annex one condition to the exercise of the privilege implies a right to annex others which may at least impair, if not in fact amount to a denial of its exercise. The right to make restrictions must be held to be restrictions in the nature of regulations and not restrictions which shall prohibit the use or impose new conditions to the power to exercise the right."

It would be useless to have the right to lay pipes in the street without the power to erect works for the manufacture of gas with which, through such pipes, to supply the inhabitants of the city therewith. The use of the streets would only be an exercise of a part of a corporate franchise and as was said in the case of *Millvale vs. Evergreen Railroad Company, supra,* "Any other doctrine would subordinate the corporate franchise of the defendant to the will of the borrough council, and cannot be sanctioned for a moment."

The use of the streets is but an incident to the right to manufacture and distribute gas, and it cannot be said that the incident shall be greater than the whole. It is only a part of the entire enterprise which must have been contemplated by the framers of the Constitution of the State of California.

We present this question to the consideration of this Court because we believe that under the provisions of the Constitution, Section 19 of Article XI, there is an implied power granted to every person; an implied franchise constitutionally given to every person to erect gas works within cities in California and to construct and maintain them.

The power of introducing into and supplying the city with gas carries with it the implied power to construct within the city—not in some outlying district which cannot be connected with it—gas works for that purpose. Without this right the provisions of the Constitution of the State of California as to supplying gas are rendered absolutely nugatory; for as the provision does not apply except to cities or like municipalities the attempt to exclude gas works from such cities destroys the right to supply gas under the constitutional franchise and of using the streets to supply the city and its inhabitants with gas.

Before concluding the discussion of this point we desire to direct the attention of this Court to the sweeping and prohibitory character of this ordinance in its attempted effect upon the right of citizens to make and store gas for useful purposes. The ordinance does not regulate the manner in which gas is to be manufactured, nor does it direct the method in which gas shall be stored, nor limit the amount of gas which shall be made or stored, but under its terms the making and storage of gas, except within the favored boundaries, must be absolutely stopped. The resident in the sparsely settled districts of the city, remote from

the gas mains of the Los Angeles Lighting Company, is debarred from illuminating his house by means of any of the numerous gas-making machines which have been safely used for years, and which are now in use in many residences in the City of Los Angeles.

2. We contend next that the ordinance is void in that it is unreasonable because it does not describe the district by any geographical or natural boundary or by any reasonable designation.

It goes to the reasonableness of this ordinance that it describes the district by irregular and arbitrary boundaries for the sole purpose of protecting certain interests that are already established within said boundaries—those operated by the Los Angeles Lighting Company. By an examination of the ordinance of August 26th, 1901, it will be observed that the boundary lines are drawn without any regard to any natural or geographical lines. While the eastern boundary line was the Los Angeles river and the southern boundary line the city limits of the City of Los Angeles, the western boundary line was an irregular line running through the line of Santa Fe avenue to the center line of Violet street; thence west along the center line of Violet street to the center line of Wilson street; then north along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence

easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street. This western boundary was an irregular line, and as we claim, was laid out and designated for the purpose of protecting the existing works of the Los Angeles Lighting Company.

If the ordinance is unreasonable it is invalid, as we have already shown.

3. This ordinance is invalid because it is an attempt on the part of the City Council of the City of Los Angeles to define and make that a nuisance which is not a nuisance per se.

It is our contention that it is not within the power of the City of Los Angeles to adopt any ordinance which will make a nuisance of that which is not a nuisance *per se*, nor could such a declaration make it a nuisance unless it in fact had that character; and that the City Council may not by a mere resolution or motion declare a particular thing a nuisance which has not been theretofore pronounced such by law or so adjudged by judicial determination.

The ordinances in question make it unlawful to erect or maintain any works for the manufacture of gas. In the erection of a gas works there certainly cannot be created a nuisance, and it cannot be determined by the mere passage of an ordinance that the maintenance of a gas works will be a nuisance. The allegations of the bill and petition in these cases are that in its maintenance it will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the district in which it is located, or of the City of Los Angeles.

We contend that this ordinance is too sweeping and too broad and that there is nothing in the law or in the charter provisions of the City of Los Angeles or in the Constitution of this State that authorized the City of Los Angeles to pass an ordinance which makes that a nuisance which is not a nuisance *per se;* that in the erection of gas works in itself there is no nuisance, and we assert that the courts have decided in many cases that the mere designation of the legislative body that a certain thing is a nuisance which is not a nuisance or which the courts have not determined to be a nuisance does not make it a nuisance, and the legislative act is in that respect always subject to judicial scrutiny and revision.

This Court, in the case of *Yates v. Milwaukee,* 10 Wall. 497, said:

"The act of the Wisconsin Legislature, approved March 31st, 1854, confers upon the City of Milwaukee the authority to establish dock and wharf lines on the banks of the Milwaukee and Menomonee rivers, and restrain and prevent encroachments upon said rivers and obstructions thereto, and it is said by this statute that the summary proceedings for the removal of appellant's wharf are supposed to be authorized. But the mere declaration by the City Council of Milwaukee that a certain structure was an encroachment or obstruction did not make it so, nor could such declaration make it a nuisance unless it in fact had that character. It is a doctrine not to be tolerated in this country, that a municipal corporation, without any general laws either of the city or of the State, within which a given structure can be shown to be a nuisance, can, by its mere declaration that it is one, subject it to removal by any person supposed to be aggrieved, or even by the city itself. This would place every house, every business, and all the property of the city, at the uncontrolled will of the temporary local authorities. Yet this seems to have been the view taken by counsel who defended this case in the Circuit Court; for that single ordinance of the city, declaring the

wharf of Yates a nuisance, and ordering its abatement, is the only evidence in the record that it is a nuisance or an obstruction to navigation, or in any manner injurious to the public."

The same doctrine is laid down in the *C. R. I & P. R. R. v. Joliet*, 79 Ill. 25, 44; *Everett v. Council Bluffs*, 46 Iowa, 66.

The case of the *City of Denver v. Mullen*, (Colo.) 3 Pacific Rep. 693, was an action brought against the City of Denver for an injunction to restrain it from interfering with the flow of the water in the Platt and Denver ditch. The basis of authority for the action of the city in the premises was made to rest upon certain provisions of the city charter and certain ordinances authorizing the city "to make regulations to secure the general health of the inhabitants, to declare what shall be a nuisance, and to prevent and remove the same."

The Supreme Court of Colorado in deciding this case said:

"The proper construction of this language is that the city is clothed with authority to declare by general ordinance what shall constitute a nuisance; that is to say, the city may by such ordinance define, classify and enact what things or classes of things and under what conditions and circumstances such specified things, are to constitute and be deemed, nuisances. For instance, the city might under such authority, declare by ordinance that slaughter-houses within the limits of the city, carcasses of dead animals left lying within the city, goods, boxes, and the like, piled up or remaining for a certain length of time on the sidewalks, or other things injurious to health, or causing obstruction or danger to the public in the use of the streets and sidewalks, should be deemed nuisances; not that the City Council may, by a mere resolution or motion, declare any particular thing a nuisance which has not theretofore been pronounced to be such by law, or so adjudged by judicial de-

termination. *Everett v. Council Bluffs*, 46 Iowa, 66; *Yates v. Milwaukee*, 10 Wall. 497. * * *

"It is only certain kinds of nuisances that may be removed or abated by the acts of individuals or by the public, such as those which affect the health or interfere with the safety of property or person, or are tangible obstructions to streets and highways under circumstances presenting an emergency. Such clear cases of nuisances *per se* are well understood, and need not be further noticed here, to distinguish them from the cases before us. If it were admitted that this ditch, by reason of its obstruction to the use of the public streets at the time of the acts complained of, was a nuisance, it must also be admitted that it was not a nuisance *per se*. It was constructed for a necessary, useful, and lawful purpose, was used for such purpose and therefore in its nature was not a nuisance, as a matter of law. Nor, as a matter of fact, was it a nuisance while it was no hurt, detriment, or offense to the public, or to any private citizen. If, then, it has become a nuisance, it is by reason of a change of circumstances brought about, neither by the ditch itself nor its use."

In *ex parte Sing Lee*, 96 Cal. 354, it appears that the petitioner had been arrested for violating an ordinance making it unlawful to establish, maintain and carry on the business of a public laundry, without first having obtained the permit of the Board of Trustees. Of this ordinance the Supreme Court of California said:

"It is provided by Sec. 11 of Article XI of the Constitution of this State, that 'any county, city, town or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws,' and it is argued here, in behalf of the respondent, that the ordinance in question is a police regulation, and therefore one which the town of Chico was authorized to enact by this section of the Constitution. The power conferred upon cities and towns by the section just quoted is undoubtedly a very broad and comprehensive one, and would sustain the enactment of any ordinance having

a reasonable tendency to promote the health, the comfort, safety and welfare of the inhabitants of the municipality, and which would not be in conflict with some general law of the State. But, broad as is this power, the ordinance before us cannot be considered as falling within the limits of its proper exercise.

"The business of conducting a laundry is a lawful occupation, precisely as much so as is that of the carpenter, blacksmith, or merchant, and is not of itself, and irrespective of the manner in which it is conducted, offensive or dangerous to the health of those living within its vicinity. * * *"

The case of the *County of Los Angeles v. The Hollywood Cemetery Association*, 124 Cal. 344, was a bill for an injunction to restrain the defendant from establishing a cemetery upon certain lands, in violation of the ordinance prohibiting the location or establishing of a cemetery within the limits of the County of Los Angeles without permission of the Board of Supervisors. It was held in that case that the ordinance was not a reasonable exercise of the police power and that it was not unlawful to establish a cemetery for the burial of the dead, deriving profit therefrom, as a business enterprise.

Grossman v. Oakland, 30 Oregon, 478.
Stockton Laundry Case, 31 Fed. 680.
In re Hong Wah, 82 Fed. Rep. 623, 624-626.
Ex parte Whitall, 98 Cal. 73.
Wood on Nuisances, Sec. 744.

The Charter of the City of Los Angeles gives the right to designate what are nuisances and to abate them, but we say that a power *to abate* does not include the power *to prevent*. That the power to abate may some times include the power to prevent must be conceded, but it is only in those cases where a thing sought to be prevented is a nuisance

per se, and those things which only become a nuisance because of the method of their operation cannot be prevented and stopped under the power simply to abate until it has been demonstrated that they are nuisances.

This point was decided by the Supreme Court of the State of Illinois in the case of *Lakeview v. Letz*, 44 Ill. 81-83, where the Court said:

"Various powers for municipal government were conferred upon them, and among others the power 'to abate and remove nuisances, and punish the authors thereof by penalties, fines and imprisonment, and to authorize and direct the summary abatement thereof.' * * * * The act of the legislature authorizing the board of trustees 'to abate and remove nuisances,' gave them no power to pass an ordinance forbidding the establishment of a cemetery. Conceding that the power to 'abate and remove' should be construed as including the power to prevent, yet this preventive power could only be exercised in reference to those things which in their nature are nuisances in themselves, and necessarily so. There are some things which in their natures are nuisances, and which the law recognizes as such. There are others which may or may not be so, their character in this respect depending on circumstances. Now, the town of Lake View is a rural township, containing about eleven sections or square miles of territory. It is therefore impossible to hold, that a cemetery anywhere within the limits of the town, must necessarily be a nuisance, and can be prohibited in advance as such. A cemetery may be so placed as to be injurious to the public health, and therefore a nuisance. It may, on the other hand, be so located and arranged, so planted with trees and flowering shrubs, intersected with drives and walks, and decorated with monumental marbles, as to be not less beautiful than a public landscape garden, and as free from all reasonable objection. The power to prohibit the establishment of cemeteries except by the authority of the trustees cannot be considered as falling within the power to abate and remove nuisances."

Enough has been said to show that this ordinance of August 26th, 1901, is unreasonable and too sweeping. It is unreasonable and too broad from the fact that it attempts to say that it is unlawful to erect gas works when it is shown that the gas works can be maintained in a most satisfactory condition, not only to the public authorities, but to all the surrounding inhabitants.

If the ordinance is in violation of the rights of the petitioners to engage in a lawful occupation; if the ordinance is unreasonable in the description of the district in which it is sought to limit the right to conduct gas works within the City of Los Angeles; if it is unreasonable on any other ground; if it is intended in its operation for the purpose of protecting only certain gas works and destroying all others; if it is beyond the power of the City Council to declare that a nuisance which is not a nuisance, then this ordinance of August 26th, 1902, is invalid and violates the rights, privileges and immunities of these plaintiffs in error.

And if this Court should hold that the ordinance of August 26th, 1901, is invalid, then it must follow that the ordinance of March 3rd, 1902, which is an amendment to it, must also be invalid and void and it will be so declared by this Court.

It is not necessary for this Court to consider specifically the ordinance number 6779, attempted to be adopted by the City Council of the City of Los Angeles, November 25th, 1901, as an amendment to section one of the ordinance of August 26th, 1901, for the reason that an examination of that ordinance will disclose that the designated boundaries therein mentioned do not describe a district. The boundaries are not tied together, and the gap in the description of over one thousand feet of itself rendering the ordinance invalid for indefiniteness. Recognizing this fact, the City

Council of the City of Los Angeles adopted the ordinance number 7029 of March 3rd, 1902, the effect of which was to repeal the ordinance of November 25th, 1901, attempting to cover the same subject matter.

The ordinances are on the same subject matter. The latter covers the whole subject matter of the earlier ordinance, and while not purporting to amend, it plainly shows that it was intended as a substitute for the earlier act. "Such an ordinance will repeal the former ordinance covering the same subject."

23 Am. & Eng. Encyclopedia of Law, 485.

SECOND: IF THIS COURT HOWEVER SHOULD HOLD THAT THE ORDINANCE OF AUGUST 26TH, 1901, IS A VALID ORDINANCE, THEN WE CONTEND THAT THE ORDINANCE OF MARCH 3, 1902, IS INVALID FOR THE REASON THAT IT IS IN VIOLATION OF THE VESTED RIGHTS ACQUIRED BY THE PLAINTIFF IN ERROR, CAROLINE W. DOBBINS, BY VIRTUE OF HER PURCHASE OF LAND WITHIN THE LIMITS OF THE DISTRICT WITHIN WHICH IT WAS LAWFUL TO ERECT GAS WORKS BY THE TERMS OF THE ORDINANCE OF AUGUST 26TH, 1901, AND BY VIRTUE OF THE PERMIT GRANTED TO HER BY THE BOARD OF FIRE COMMISSIONERS OF THE CITY OF LOS ANGELES ON THE 22ND DAY OF NOVEMBER, 1901, UNDER THE EXISTING BUILDING AND FIRE ORDINANCE.

There has been no dispute or controversy, and can be none, between the counsel for the plaintiffs in error and the counsel for the City of Los Angles as to the fact that Mrs. Dobbins acquired vested rights by virtue of her purchase under legislative authority, on the 28th day of September,

1901, of the land within the district described in the ordinance of August 26th, 1901, in which it was lawful to erect gas works; by the permit that she received from the Board of Fire Commissioners on the 22nd day of November, 1901; by the acceptance of that permit and the expenditure by her thereunder of large sums of money prior to the passage of the ordinance of March 3rd, 1902.

It is not necessary in the statement of our case to set forth and enlarge upon what we consider to be the vested rights of the plaintiff in error, Mrs. Dobbins.

It is sufficient, however, for the purpose of this argument, to say that all the acts of the said plaintiff in error were with a view of abiding by and conforming to the terms of the ordinances existing in the City of Los Angeles prior to the 3rd day of March, 1902.

It is true that the gas works had not been completed at the time of filing the complaint herein, and that it was necessary to continue the work thereon for three to four weeks longer in order to complete them, but there is no difference in law between executory and executed contracts so far as the power of the city to pass any law impairing their obligations. The rights acquired by Mrs. Dobbins were vested rights, privileges and immunities and having been by her lawfully obtained, accepted and acted under, they are vested rights and are as inviolable as any rights of property whatever.

In defining what is a vested right, Mr. Justice Chase in the case of *Calder v. Bull*, 3 Dall 394, has said: "When I say that a right is vested in a citizen I mean that he has the power to do certain actions or possess certain things according to the law of the land."

As has been well said "everything which may pass under the form of an enactment is not to be considered the law of

the land" and we contend that the ordinance of March 3rd, 1902, is not "the law of the land."

In the case of *Farrington v. Tennessee*, 95 U. S. 679, Mr. Justice Swayne, delivering the opinion of the court said:

"A compact lies at the foundation of all national life. Contracts mark the progress of communities in civilization and prosperity. They guard, as far as is possible, against the fluctuations of human affairs. They seek to give stability to the present and certainty to the future. They gauge the confidence of man in the truthfulness and integrity of his fellowmen. They are the springs of business, trade and commerce. * * * *

"The Constitution of the United States wisely protects this interest, public and private, from invasion by State laws. It declares that 'no State shall * * * pass any * * * laws impairing the obligation of contracts.' Art. 1, Sec. 10. This limitation no member of the Union can overpass. It is one of the most important functions of this tribunal to apply and enforce it upon all proper occasions. * * *

"Contracts are executed or executory. A contract is executed where everything that was to be done is done, and nothing remains to be done. A grant actually made is within this category. Such a contract requires no consideration to support it. A gift consummated is as valid in law as anything else. *Dartmouth College v. Woodward*, 4 Wheat. 518. An executory contract is one where it is stipulated by the agreement of minds, upon a sufficient consideration, that something is to be done or not to be done by one or both the parties. Only a slight consideration is necessary. *Pillans v. Van Microp*, 3 Burr. 1663; *Fourth v. Stanton*, 1 Saund. 210, note 2, and the cases there cited.

"The constitutional prohibition applies alike to both executory and executed contracts, by whomsoever made. The amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of this court to redress the wrong. Von Hoffman v. City of Quincy, 4 Wall. 535.

"The doctrine of the sacredness of vested rights has its root deep in the common law of England, whence so much of our own has been transplanted. Kent, then chief justice, said: 'It is a principle of that law, as old as the law itself, that a statute even of its omnipotent Parliament is not to have a retrospective effect. *Nova constitutio futuris forman imponere debet et non preteritis.* Bracton, lib. 228; 2 Inst. 292. *Dash v. Van Kleeck,* 7 Johns. (N. Y.) 447. See also *Society, Etc., v. Wheeler et al,* 2 Gall. 105, and Broom's Legal Maxims, 34."

See also *Steamship Co. v. Joliff,* 2 Wall. 457.

Worth v. Cranson, 98 U. S. 118.

Classen v. Chesapeake Guano Co., (Md.) 31 Atla. Rep. 808.

Roberts v. Brooks, 71 Fed. Rep. 914.

Baltimore Trust Co. v. Baltimore, 64 Fed. Rep. 153.

Lewis v. City of Newton, 75 Fed. Rep. 884.

Cleveland City Railroad Co. v. City of Cleveland, 94 Fed. Rep. 385.

City Railway Company v. Citizens Street Railway Co., 166 U. S. 562.

Sufficient has been said in this case to show that the plaintiff in error, Mrs. Dobbins, had vested rights in the premises at the time of the adoption and passage of the ordinance of March 3rd, 1902.

The ordinance is void as depriving the plaintiff in error, Caroline W. Dobbins, of property without due process of law.

The plaintiff in error, Caroline W. Dobbins, did not acquire by the permit from the Fire Commissioners, an exclusive privilege; nor did she by the purchase of the real property, acquired by her within the district by which it was made lawful under the ordinance of August 26th, 1901,

to operate a gas works within the district described in the ordinance. But she having acquired that property and having secured the permit from the Fire Commissioners, to take from her that property and the right of using it, and enjoying it for all the purposes for which it was capable, was depriving her of the property without due process of law within the meaning of the Constitution of the State of California and of the Constitution of the United States by taking away one of the incidents of its ownershrip, the right to use it and the right thereon to pursue an honest business, which business in itself was lawful and recognized as such by the laws of the State of California. To impose proper restrictions upon the property in a proper exercise of the police power is one thing, but to absolutely prevent the use of the property for the purposes for which the said plaintiff in error had purchased it, was to deprive her of her property without due process of law.

The case of the *City of Chicago v. Netcher*, 183 Ill. 104, was an action by the City of Chicago against Charles Netcher for a violation of an ordinance which was directed against the class of stores known as "department stores" or general stores for the sale of different kinds of merchandise divided into separate departments, in the City of Chicago. In reference to the ordinance involved in this case, the Supreme Court of Illinois said:

"The ordinance is also an attempted interference by the city with rights guaranteed to the defendant by the constitutions of the United States and of this state. The questions involved are not new. They have been before this and other courts throughout this country in numerous cases, and the rights of the citizen, as against such interference, have been frequently defined, and uniformly upheld. These constitutions insure to every person, liberty and the protection of his property rights, and provide that he shall not be deprived of life, liberty or property without due

process of law. The liberty of the citizen includes the right to acquire property, to own and use it, to buy and sell it, It is a necessary incident to the ownership of property that the owner shall have a right to sell or barter it, and this right is protected by the constitutions as such an incident of ownership. When an owner is deprived of the right to expose for sale and sell his property, he is deprived of property, within the meaning of the constitution, by taking away one of the incidents of ownership. Liberty includes the right to pursue such honest calling or avocation as the citizen may choose, subject only to such restrictions as may be necessary for the protection of the public health, morals, safety, and welfare. The state, for the purpose of public protection, may, in the proper exercise of the police power, impose restrictions and regulations; but the right to acquire and dispose of property is subject only to that power. The individual may pursue, without let or hinderance from any one, all such callings or pursuits as are innocent in themselves, and not injurious to the public. These are fundamental rights of every person living under this government. The legislature can neither, by an enactment of its own, interfere with such rights, nor authorize a municipal corporation to do so. *Frorer v. People*, 141 Ill. 171, 31 N. E. 395; *Ramsey v. People*, 142 Ill. 380, 32 N. E. 364; *Braceville Coal Co. v. People*, 147 Ill. 66, 35 N. E. 62; Cooley, Const. Lim. 393."

But it will be contended on behalf of the defendant in error, that though said plaintiff in error had acquired vested rights, yet those vested rights are subject to *police regulations* and the *police power* of the State. It is contended therefore by defendant in error that this ordinance is a police regulation.

The Ordinance of March 3, 1902, is not a proper execution of the police power.

Should it be decided that it was within the power of the City Council to adopt the ordinance of August 26th, 1901, this question is as we take it one that deserves this Court's

gravest consideration, namely, whether or not the ordinance of March 3rd, 1902, is a proper police regulation.

It is our contention that this ordinance is not a police regulation and does not come within the power of the City of Los Angeles in reference to police regulations; that it is not within the police regulations as defined and recognized, and not within the sovereign police power of the State itself; and that therefore it is in violation of the vested rights acquired by plaintiff in error, Caroline W. Dobbins.

In discussing this question as to the police power of the State, where the vested rights are involved, and as to the duty and power of this Court, we desire to call the attention of this Court to the expression that is used by the Supreme Court of the State of New York in the case of *People v. Budd*, 117 N. Y. 1, where the Court said:

"The generality of terms employed by jurists and publicists in defining the power, while they show its breadth in and the universality of its presence, nevertheless leaves its boundaries and limitations indefinite, and impose upon the Court the necessity, as each case arises, to determine whether the particular statute falls within or outside of its appropriate limits."

So it is for this Court to determine as an independent question whether this particular ordinance belongs or does not belong within the police power and whether or not it interferes with the vested rights which we have acquired.

Mr. Justice Brannon, in his work on the Fourteenth Amendment, the most recent work in reference to this important article of the Federal Constitution, p. 172, says:

"In *Lawton v. Steele*, 152 U. S. 133, is an opinion by Mr. Justice Brown which I consider one of the very best statements of the nature and extent of the police power to be found anywhere. Mr. Justice Brown says: "It is universally conceded to include everything essential to public safety, health and morals, and to justify destruction or

abatement by summary proceedings of whatever may be regarded as public nuisances. * * * * * * * 'To justify the State in thus interposing its authority in behalf of the public it must appear, *first*, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, *second*, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under guise of protecting public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination of what is a proper exercise of the police power is not final or conclusive, but is subject to the supervision of the courts.'"

This ordinance is not within the provisions of the police power as we understand it. We understand the police power, as defined, to have reference to *those things which affect the public health, the public safety, the public comfort or the public morals.* If they do not affect those things they are arbitrary exercises of the legislative power and if they affect vested rights the courts will not sustain them.

In the case of *Noel v. People*, 187 Ill. 587, the Supreme Court of Illinois said: "Undoubtedly the legislature has the right, under the police power, to pass enactments for the benefit and promotion of the public health. But it is well settled that the exercise of the police power must be limited to such measures as are designed to promote the public health, the public morals, the public safety, or the public welfare. *City of Chicago v. Netcher*, 183 Ill. 104. When it can be seen from the provisions of a statute that it has no tendency to promote the public health, safety, morals, comfort, or welfare, the courts are authorized to declare it invalid."

In that case the Supreme Court of Illinois quoted with approval from the case of *State v. Donaldson*, 41 Minn. 74, where the Supreme Court of Minnesota said:

"In the absence of some other regulations, a statute merely limiting the sale of patent medicines to a particular class

would not and could not have any natural or reasonable tendency to protect the public. Such a law would not go far enough to amount to a police regulation. It would be merely giving a certain class of men a monopoly of the trade. This is not within the police power of this State. * * * A law enacted in the exercise of the police power must in fact be a police law. If it be a law for the protection of public health, it must be a health law having some relation to public health.* * * If it is apparent on the face of the act that its provisions, from the very nature, cannot and will not conduce to any legitimate police purpose, it is the right as well as the duty of the court to pronounce it invalid, as in excess of legislative power, and an arbitrary and unwarranted inteference with the right of the citizen to pursue any lawful occupation."

In *Chicago v. Netcher, supra*, the Supreme Court of Illinois further said: "In order to sustain legislative interference with the business of the citizen by virtue of the police power, it is necessary that the act should have some reasonable relation to the subjects included in such power. If it is claimed that the statute or ordinance is referable to the police power, the court must be able to see that it tends, in some degree, towards the prevention of offenses, or the preservation of the public health, morals, safety, or welfare. It must be apparent that some such end is the one actually intended, and that there is some connection between the provisions of the law and such purpose. If it is manifest that the statute or ordinance has no such object, but, under the guise of a police regulation, is an invasion of the property rights of the individual, it is the duty of the court to declare it void. *Braceville Coal Co. v. People, supra; Eden v. People*, 161 Ill. 296, 43 N. E. 1108; Cooley, Const. Lim. 577. It is not claimed in the argument for the city that the selling of the different kinds of merchandise mentioned in the ordinance in the same building tends in any way to affect the safety, health, morals, comfort, or welfare of the public. No attempt is made to suggest any grounds upon which the ordinance can be justified as an exercise of the police power of the city or the state. It certainly cannot be contended

that there is anything in the character of dry goods, clothing, jewelry, and drugs which renders it dangerous to the public, or inimical to the general welfare, that they should be sold in the same building with provisions. General stores have always dealt in all kinds of merchandise, and no one has ever imagined that the comfort, safety, or welfare of the public was in any manner or to any extent injured or prejudiced by them. Public health and public comfort are in no way affected by selling the different kinds of merchandise enumerated in different departments of the same building, and would not be if the same clerk should sell them, nor would the public welfare or comfort be increased by compelling a customer to buy one kind of merchandise in one store and another in some other store. In *Meyers v. Baker*, 120 Ill., 567, 12 N. E. 79, the act prohibiting the establishment of a tent, booth, or place of vending provisions or refreshments within a certain distance of a camp meeting was sustained as a police regulation tending to prevent disturbance or disorderly conduct. But this ordinance has no such purpose. It is plain that its object is not to protect the health, morals, or safety of the public, or to accomplish any object falling within the police power. It is a mere attempt to deny a property right to a particular class in the community, where all other members of the community are left to enjoy it. It is immaterial whether such a denial is in a statute or in an ordinance passed by virtue of a statute. It is equally invalid in either case."

The police power of the State of California is a sovereign power. It does not exist by virtue of the grant of the constitution of that State. The provisions of the constitution of that State in reference thereto are not a grant of the police power. The police power, like the power of eminent domain and the power of taxation is a sovereign power within the people of the State prior to the adoption of the constitution. Sec. 11 of Art. XI of the constitution of the State of California is not, therefore, a grant of police power but it is an extension to the counties, cities, towns or townships of

the State of the right to exercise the powers that are inherent in the legislature as the representative of the people. That is the scope of Section 11 of Article XI of the constitution of that State. It is therein provided "that any county, city, town or township may make or enforce within its limits all such local police, sanitary or other regulations as are not in conflict with general laws." The provisions of that constitution are simply a grant to the municipal authorities to exercise a power which is inherent in the State. It does not enlarge upon that power or give the municipality any power which the legislature itself did not have; namely a right to exercise the police power by virtue of its sovereignty; and the police power is not enlarged by virtue of the terms of the provisions of that constitution. It is as it always was, the right of the people to legislate in reference to those things which promote the public health, the public comfort, the public safety or the public morals.

It was not intended by either the constitution of that State, or any statute passed prior to its adoption, to vest in the City of Los Angeles police powers in excess of those which states or municipalities exercised prior to the adoption of the constitution of the State of California, and it cannot be successfully asserted that the City of Los Angeles has to-day any police power which is superior to and more far-reaching than that which the common law recognizes as inherent in states and as possessed by municipalities to whom that police power upon certain subjects had been delegated.

Ex parte Campbell, 74 Cal. 20;
Ex parte Roach, 104 Cal. 272.

The following authorities clearly define the police power and are applicable to the case at bar, and distinguish the case at bar from the authorities relied upon by the defendant in error in the court below.

The case of the *City of Indianapolis v. Consumers' Gas Trust Company*, 140 Ind. 107, was prosecuted by the City of Indianapolis against the Consumers' Gas Trust Company for the violation of a city ordinance. By the general ordinance passed by the City of Indianapolis on the 27th day of June, 1887, it was provided that any corporation could maintain, lay or extend and maintain mains, pipes, etc., through the streets, etc., of said city, and may take up for the purpose of altering, changing or repairing the same, as the necessities of the case may require, for the purpose of supplying such city and its inhabitants with natural gas under certain restrictions and conditions prescribed in the ordinance. Afterwards, in 1890, the City Council of the City of Indianapolis passed an ordinance making it unlawful for any person, firm or corporation to cut or dig into any street or alley that may theretofore have been paved with brick, or any form of block, macadam or asphaltic pavement, until such person, firm or corporation, for whose benefit such proposed opening was to be made, should have first secured the consent of the common council and board of aldermen so to do, and should have filed in the office of the city a bond conditioned to protect the city from all liability on account of the proposed opening of said street. For the alleged violation of this city ordinance the prosecutions were commenced against the defendant and it was contended that the defendant having complied in all respects with the provisions of the ordinance of June, 1887, that the ordinance of 1890 was invalid in that it impaired the obligation of the legislative contract between appellant and appellee by virtue of the ordinance of 1887. It was contended by the city, that nothwithstanding the passage of the first ordinance and the acceptance thereof by the Gas Company constituted a contract, yet it was subject to the exercise of the police power upon the part of the city, which power could

not be bargained away, and that the ordinance of 1890 was a valid exercise of that power. In reference to this ordinance and this question, the Supreme Court of Indiana, said:

"There was no compulsion on the part of the appellant to grant the privilege to use its streets to any particular company. It was within its discretion to give or not to give its consent, and it had the right to withhold it from all gas companies. *Gas & Min. Co. v. Town of Elwood*, 114 Ind. 332, 16 N. E. 624. It was not limited alone to the granting of the franchise, but it had the right to prescribe and impose terms and conditions. Dill Mun. Corp. Sec. 706; 2 Wood, Ry. Law, p. 986. Elliott Roads, & S., p. 465. When these terms and conditions proposed by appellant were accepted by the appellee, and complied with, it became a binding contract. *Western P. & S. Co. v. Citizens' St. R. Co.*, 128 Ind. 531, 26 N. E. 188, and 28 N. E. 88. But the appellant contends that such grants are but the exercise of police power, and may be changed or repealed by the granting power. It is true, that, in grants to persons or corporations to supply gas and the like to the inhabitants of towns or cities, the municipality does not part with or bargain away its right, under the police power, to protect the public health, the public morals, and public safety, as the one or the other may be affected by the exercise of the franchise by the grantee. *New Orleans Gaslight Co. v. Louisiana etc., Manuf'g. Co.*, 115 U. S. 650, Beach Pub. Corp., Secs. 713, 990, 1229, 1230. In the case of the *City of Indianapolis v. Indianapolis Gaslight & Coke Co., supra*, it was contended, upon the part of the city, that the contract in controversy was a restriction upon the legislative power to regulate the lighting of the streets. But this court, in that case, draw the distinction between the legislative and contractual powers of municipal bodies as follows: 'These two powers need not be confounded. The exercise of the legislative power requires the consent of no person, except those who legislate, while it is impossible to make a contract without the consent of another or others. We think, therefore, that, when the City of Indianapolis made the contract in question with

the gas light company, it made it in the exercise of its power to contract, and not in the exercise of its powers to legislate, although the power to make the contract was authorized by an ordinance; and, having the power to make a contract touching the subject-matter, it had the right to make it according to its own discretion as to its prudence or good policy, within the limits of its franchise. Nor can we see that the contract in the least restricts the legislative powers of the city, except that, as the sanctity of the contract is shielded by the Constitution of the United States, it cannot, in the exercise of its legislative power, impair its validity; for it would be a solecism to hold that a municipal corporation can impair the validity of a contract, when the state which created the corporation, by its most solemn acts, has no such power.' See, also *Insurance Co. v. Debolt*, 16 How. 416. The appellant cites *Stone v. Mississippi*, 101 U. S. 814, in support of its contention that the grant to appellee to use the streets was the exercise of its police power; but this case decides only that the abolition of a lottery was clearly within this power, as lotteries are contrary to public morals. The case has no bearing upon the rules which the appellant insists ought to be applied in the case now before us. Chief Justice Waite, in this case, speaking for the court, on page 818 of the opinion, said: 'Many attempts have been made in this court and elesewhere to define the police power, but never with success. It is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself, which will be in all respects accurate. No one, however, denies that it extends to all matters affecting the public health or the public morals.' This, we think enunciates the true rule. We cannot agree, and hold with the appellant that the second ordinance upon which this prosecution is based should be regarded as an exercise of the police power under discussion, so as to bind the appellee, under the facts alleged in his answer, and thereby compel it to comply with its terms and conditions in the exercise of the rights granted to it by the first ordinance."

The case of *Barthet v. City of New Orleans*, 24 Fed.

Rep. 564, is also directly in point, and in this case the City of New Orleans attempted to do what the City of Los Angeles is now attempting to do, in having once established a district, they attempted to restrict it. It appeared in this case that by several ordinances adopted, the City of New Orleans designated the place at which the slaughtering of cattle might be carried on, and prescribed in detail the regulations under which said business could be conducted. The complainant, a citizen of France, whose trade and business was the slaughtering of cattle for food, desiring and intending to engage in such business in New Orelans, leased, with the privilege of buying, two squares of land situate within the limits prescribed by the city ordinance, and proceeded to repair such buildings and construct on said ground other buildings and improvements suitable for the trade in which he is engaged, investing in said improvements a considerable sum of money. Subsequently, on May 19th, an ordinance was passed by the Council which is styled "An ordinance amending ordinance 7,336, as passed September 13, 1881, designating the places for slaughtering animals intended for food under article 248 of the constitution." The original ordinance provided that "It shall be lawful for any person or corporation to keep and maintain slaughter houses, etc., within certain limits, under certain regulations." The amendment mentioned made it unlawful to keep and maintain slaughter houses within said limits prescribed in the original ordinance and under said regulation "except permission be granted by the Council of the City of New Orleans." The court said:

"It appears that defendant corporation intends actively to enforce, or attempt to enforce, as against Barthet, the amended ordinance; that it is about to obstruct, hinder, and prevent him from carrying on his legal business in the limits already laid out in pursuance of article 248.

"The complainant, alleging that, acting on the good faith of said articles and ordinances, he has acquired vested rights, and that the ordinance of May 19th is unconstitutional, brings a bill for injunction to enjoin and restrain the defendant from interfering in any manner with him in carrying on his business. * * * * *

"If the amendment of May 19th becomes operative as a law, the investment made by Barthet, on the faith of the law existing when he erected his buildings, will be lost or greatly diminished in value and his privilege, which is of more value, may be wholly destroyed by refusal of the city. It is urged in argument that the corporation is a legislative body, endowed with police powers, to be exercised with absolute discretion; that this court has no power to control or limit its action in directing when, and upon what particular lot in the territory laid out and defined by the city, Barthet, or any other person following the same business, may locate and carry on his business of slaughtering animals for food. The proposition of the city attorney, in view of the many cases that have been decided by the State and Federal courts, in which just such assumption of power have been contended for and denied to municipal authorities, need not now be considered, further than to say that the court does not think the proposition maintainable under the law and facts found on the hearing of this bill."

"Our opinion will be better understood when we say that the city authorities have no power, legislative, judicial, or administrative, to pass the ordinance complained of; because the power, by whatever name it may be called, delegated to the city in articles 248, 258, as far as Barthet is now concerned, was exhausted when the city officials laid out the limits in which it was declared lawful to slaughter animals for food."

The case of the *City of Buffalo v. Chadeayne*, 124 N. Y. 163, is a case where the City of Buffalo, having prescribed certain fire limits and having given permit to a citizen of Buffalo to erect seven frame buildings within that district, subsequently after he had his foundations laid, changed the

district and prosecuted him for a violation of the ordinance by which they attempted to restrict the district. In that respect it is similar to the case at bar. The court said:

"This action was brought to recover a penalty for an alleged violation of an ordinance pertaining to the erection of wooden buildings within the prescribed fire limits of the City of Buffalo. On the 11th day of July, 1887, the Common Council of the city passed a resolution granting permission to the defendant to erect seven frame wooden houses upon premises owned by him, and specifically described. The resolution was duly approved by the mayor, and thereupon, the defendant entered into a contract for the materials with which to make such structures. He made excavations for the cellars, and laid a portion of the walls prior to the 1st day of August. On that day the Common Council, without notice to him, passed a resolution which it is claimed rescinds the former resolution. The last resolution was approved by the mayor on the 15th day of August, and on the 10th day of November a copy thereof was served upon the defendant. Oral notice was given to him of the passage of the resolution on the 2nd day of August, prior to its approval by the mayor. He, however, continued the construction of his buildings, and at the time the notice, with a copy of the resolution, was served upon him in November, several of the buildings had their roofs on, and the rest were in the process of construction. This action was then brought for the penalty provided for in the ordinance, and resulted in the judgment which is the subject of this review. The charter of the plaintiff (chapter 519, Laws 1870) provides that 'the city shall have power by its Common Council from time to time to enact ordinances, * * * to prescribe the limits within which wooden buildings shall be erected, and the manner in and material of which all buildings shall be constructed within such limits. Every building erected or placed contrary to any ordinance passed under the last above provision shall be deemed a common nuisance, and may be abated as such.' Title 3, Sec. 8, Subd. 4. Pursuant to this provision, the Common Council enacted ordinances, among which we find the following: 'No per-

son shall, without permission of the Common Council, erect, place, or move any building, constructed in whole or in part of wood, within the limits of the City of Buffalo, as defined by Section 2 of Title 1 of the charter said city.' Ord. c. 5, Sec. 20. The defendant's buildings are within the fire limits, as prescribed by the ordinance. He therefore had no right to construct them without permission of the Common Council. Such permission, as we have seen, was granted on the 11th day of July, 1887, and thereby he acquired the right to proceed with the construction of his buildings, and to possess and enjoy the comforts they might afford. As soon as he had entered upon the construction of the buildings, and incurred liabilities for the work and material, he had a property interest in them. In this right he was entitled to protection. *People v. O'Brien*, 111 N. Y. 1-62, 18 N. E. Rep. 692; *In re Union El. R. of Brooklyn*, 112 N. Y. 61-75, 19 N. E. Rep. 664; *People v. Otis*, 90 N. Y. 48-52; *Stuart v. Palmer*, 74 N. Y. 183; *Detroit v. Plank-Road Co.*, 43 Mich. 140, 5 N. W. Rep. 275.

"It is claimed by the appellant that a municipal board may reconsider its action at any time before private vested rights have resulted from such action, and that the defendant could not acquire vested rights as against the police power of the state or municipality. For the purposes of this case we may concede these propositions. As to the first, it appears, as we have seen, that the defendant had entered upon the construction of his buildings, had made contracts, and incurred liabilities thereon, before the Common Council attempted to reconsider its action, giving him a permit to construct of wood. A private property right had, therefore vested in him prior to the rescission of the resolution. As to the second, his right may be subject to the police power of the State, but the difficulty is that the State has not seen fit to deprive him of such right by the exercise of such power, nor has it delegated the same to the municipality. The State has given the municipality power to prescribe the limits in which wooden buildings shall not be erected. This pertains to the future, and not to existing wooden buildings. The ordinance to which we have referred provides that no person shall, without permission of the Common Council,

erect any building in whole or in part of wood, within certain limits. This has reference to buildings that shall be erected in the future, and not existing buildings, or to those erected with the permission of the Common Council. So that neither the charter nor the ordinance authorizes it to interfere with existing buildings, or those constructed with its permission. There is consequently no power given to the Common Council to deprive the defendant of any vested property rights in the buildings. If the Common Council could interfere and rescind its permit after a building is partially constructed, it could also rescind after it was fully completed. It would consequently follow that every person who in the past has constructed wooden buildings with the permission of the Common Council is now liable to have his permit revoked, and his buildings declared a nuisance, and abated as such. The restrictions authorized by the provisions of the charter under consideration are for the purpose of the prevention and extinguishment of fires. They have no reference to buildings that may become a nuisance by reason of their becoming dangerous to the public. Having in view the purpose for which the provision was enacted, it seems to us clear that it was not intended to give to the Common Council the power to deprive persons of their buildings which had previously been erected, or of those which should be thereafter erected, in whole or in part, with the permission of the Common Council; and that its power is limited to the prevention of the erection of wooden buildings in the future without its permit."

This is the latest case in the Court of Appeals of New York having reference to this subject.

It is of vital importance in arriving at a conclusion in this case to bear in mind that the police power has only to do with those things that affect the public health, the public morals, the public comfort or the public safety. This is demonstrated and insisted upon by this Court as the real criterion of all these questions as to the exercise of the police powers.

The cases relied upon by the counsel for the defendant

in the court below, as for instance the case of *Beer Company v. Massachusetts*, 97 U. S. 25, a beer case; *Fertilizing Company v. Hyde Park*, 97 U. S. 659, a fertilizing case; and *Stone v. Mississippi*, 101 U. S. 814, a lottery case, are all well recognized as being within the police power. This case of the *Hyde Park Fertilizing Company*, as we have before said, is one of the strongest cases reported, where permission was given by a charter granted by the legislature of the State of Illinois, to the fertilizing company to erect fertilizing works within the town of Hyde Park. Subsequently, the growth of the city of Chicago was such that these works became a nuisance and the city authorities of the town of Hyde Park passed an ordinance absolutely prohibiting carrying on the manufacturing of fertilizers and rendering business within the town of Hyde Park, although this work had been caried on by this company for ten years by virtue of the charter of the legislature, and they had expended upon their works upwards of $200,000.

This court sustained the ordinance passed by the town authorities of the town of Hyde Park because they said it came directly within the definition of the police power in that it affected the public health and the public comfort.

This case is an illustration of a well recognized principle that the great police power is not bound to recognize a condition or state of things existing to-day as beyond change at its hands in time to come, when changed conditions occur and public welfare demands alteration and increased exercise of police power in restraint of privileges once established. A business once harmless and lawful under an altered condition of things may later on become hurtful to the public, and in that event may be restrained in its transaction. That is not the case at bar.

Take, however, the case of *New Orleans Gas Company*

v. Louisiana Light Company, 115 U. S. 650, and we come to a different line of authorities and we find there the distinction well pointed out by Mr. Justice Harlan, who rendered the opinion of this Court, and which is the distinction this Court will bear in mind in determining this question and should always be borne in mind in the determination of the question whether or not an ordinance is a police regulation.

Is the object sought to be attained the abatement and destruction of that which affects the public health, the public safety or the public morals? If it does not, it is not within the police power of the State; and if it affects vested rights, it is the taking of private property without due process of law. If it interferes with the lawful occupation of a citizen, it interferes with his rights, privileges and immunities.

Mr. Justice Harlan makes this distinction in the case of *New Orleans Gas Company v. Louisiana Light Company, supra*, and notwithstanding the decisions that are known as the Kansas liquor cases, decided at a later date by this Court (*Mugler v. Kansas*, 123 U. S. 623), this Court has adhered to the doctrine laid down in *New Orleans Gas Company v. Louisiana Light Company*, and in the case of *Walla Walla v. Walla Walla Water Company*, 172 U. S. 15, has reiterated the same doctrine.

Mr. Justice Harlan in the case of *New Orleans Gas Company v. Louisiana Light Company*, in delivering the opinion of the court, used this language: "The principle upon which the decisions of *Beer Company v. Massachusetts*, (97 U. S. 25), *Fertilizing Company v. Hyde Park* (97 U. S. 659), *Stone v. Mississippi* (101 U. S. 814), and *Butchers' Union Company v. Crescent City Live-Stock Landing Company* (111 U. S. 746), rest, is, that one legislature cannot so limit the discretion of its successors, that they may not enact such laws as are necesary to protect the public health, or the public morals. That principle, it may be observed, was an-

nounced with reference to particular kinds of private business which, in whatever manner conducted, were detrimental to the public health or the public morals. It is fairly the result of those cases, that statutory authority given by the State to corporations or individuals to engage in a particular private business attended by such results, while it protects them for the time against public prosecution, does not constitute a contract preventing the withdrawal of such authority, or the granting of it to others.

"The present case involves no such consideration. We have seen the manufacture of gas, and its distribution for public and private use by means of pipes laid, under legislative authority, in the streets and ways of a city, is not an ordinary business in which everyone may engage, but is a franchise belonging to the government, to be granted, for the accomplishment of public objects to whomsoever and upon what terms, it pleases. It is a business of a public nature, and meets a public necessity for which the State may make provision. It is one which, so far from affecting the public injuriously, has become one of the most important agencies of civilization, for the promotion of public convenience and the public safety."

We strenuously contend that in the erection of these gas works that there is nothing unlawful and that when we come to maintain these works, if we maintain a nuisance the city authorities have a right under changed conditions to regulate it and make us cease maintaining a nuisance, or if we charge for gas more than we ought to, they have a right to regulate that; but they have no right to absolutely drive us out of business and say we shall not erect a building in which we are going to manufacture this gas. The erection of gas works does not constitute a public offense in any respect whatever; nor does their maintenance, unless it is judicially determined it is a nuisance.

Continuing from the *New Orleans Gas Company's* case, this court says:

"Whatever therefore in the manufacture or distribution of gas in the city of New Orelans proves to be injurious to the public health, the public comfort, or the public safety, may, notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by municipal ordinance passed under legislative authority. It cannot be said with propriety, that to sustain that grant is to obstruct the State in the exercise of her power to provide for the public protection, health and safety. The article in the State Constitution of 1879 in relation to monopolies is not in any legal sense an exercise of the police power for the preservation of the public health, or the promotion of the public safety; for the exclusiveness of a grant has no relation whatever to the public health or to the public safety. These considerations depend upon the nature of the business or duty to which the grant relates, and not at all upon the inquiry whether a franchise is exercised by one rather than by many."

And so we insist that the facts that distinguish these cases whether or not they are within the police power is this: Do they affect the public health, the public safety, the public comfort or the public morals? If they do not, they are not within the proper exercise of the police power and the police regulation.

In the case of *Walla Walla City v. Walla Walla Water Company*, 172 U. S. 15, this Court said:

"The argument that the contract is void as an attempt to barter away the legislative power of the City Council rests upon the assumption that contracts for supplying a city with water are within the police power of the city, and may be controlled, managed or abrogated at the pleasure of the council. This court has doubtless held that the police power is one which remains constantly under the control of the legislative authority, and that a City Council can neither bind itself nor its successors, to contracts prejudicial to the peace, good order, health or morals of its inhabitants; but it is to cases of this class that these rulings have been confined. If a contract be objectionable in itself upon these

grounds, or if it becomes so in its execution, the municipality may, in the exercise of its police power, regulate the manner in which it may be carried out, or, may abrogate it entirely, upon the principles that it cannot bind itself to any course of action which shall prove deleterious to the health or morals of its inhabitants. In such case an appeal to the contract clause of the constitution is ineffectual. Thus in *Fertilizing Company v. Hyde Park*, 97 U. S. 659, an act of the General Assembly of Illinois authorized the Fertilizing Company to establish and maintain for fifty years certain chemical works for the purpose of converting dead animals into agricultural fertilizers, and to maintain depots in Chicago for the purpose of receiving and carrying out of the city dead animals and other animal matter which it might own or buy. Subsequently, the charter of the village of Hyde Park was revised, and power given it to define or abate nuisances injurious to the public health. It was held that under this power the village had the right to prohibit the carrying of dead animals, or offensive matter, through the streets; that the charter of the company was a sufficient license until revoked, but was not a contract guaranteeing that the company might continue to carry on a business which had become a nuisance by the growth of population around its works, or that it should be exempt for fifty years from an exercise of the police power of the State, citing *Coates v. Mayor, &c. of New York*, 7 Cowen, 585.

"Substantially, the same ruling was made in *Butchers' Union Company v. Crescent City &c Company*, 111 U. S. 746, wherein an act of the legislature of Louisiana, granting exclusive privileges for maintaining slaughter houses, was held to be subject to subsequent ordinances of the city of New Orleans opening to general competition the right to build slaughter houses.

"The same principle has been applied to charters for the maintenance of lotteries which, upon grounds of public policy, have been held to be mere licenses and subject to abrogation in the exercise of the police power of the government; *Boyd v. Alabama*, 94 U. S. 645; *Stone v. Mississippi*, 101 U S. 814; *Douglas v. Kentucky*, 168 U. S. 488; as well as to laws regulating the liquor traffic, *Beer Company v.*

Massachusetts, 97 U. S. 25; *Metropolitan Board of Excise v. Barrie*, 34 N. Y. 657; and even laws regulating the inspection of coal oil; *United States v. De Witt*, 9 Wall. 41; *Patterson v. Kentucky*, 97 U. S. 501. In the latter case it was held that a person holding a patent under the laws of the United States for an invention was not protected by such patent in selling oil condemned by a state inspector as unsafe for illuminating purposes.

"Under this power and the analogous power of taxation we should have no doubt that the City Council might take such measures as were necessary or prudent to secure the purity of the water furnished under the contract of the company, and the payment of its just contributions to the public burdens, and the observance of its own ordinances respecting the manner in which the pipes and mains of the company should be laid through the streets of the city. *New York v. Squire*, 145 U. S. 175; *St. Louis v. Western Union Tel. Co.*, 148 U. S. 92; *Laclede Gas Light Co. v. Murphy*, 170 U. S. 78. But where a contract for a supply of water is innocuous in itself and is carried out with due regard to the good order of the city and the health of its inhabitants, the aid of the police power cannot be invoked to abrogate or impair it."

In the manufacture of gas there is nothing that will affect the public health or the public safety. It is alleged in the complaint in this case that the gas works in question are being erected upon concrete foundations with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible and that the same are so firmly and substantially constructed that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most approved pattern, and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery

therein contained, so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the said district and territory in which the said gas works are located upon the premises of the said Caroline W. Dobbins, or of any other of the inhabitants of said City of Los Angeles.

The demurrer of the defendant in error admits the facts thus pleaded in the complaint as true. Until we have had an opportunity of testing this question, the city authorities have no right to interfere and exercise this so-called police power.

It will be for the counsel for defendant in error to show any case in which the police power has been sustained and allowed to infringe upon vested rights, except in those cases which affected the public health, comfort, safety or welfare, and it will be for them to show that in the nature of the case that under a police power a municipal authority has been allowed to restrain the prosecution of any business or enterprise that does not so infringe upon the public health, public comfort, public welfare or public safety.

It wil not be sufficient for them to cite the case of *ex parte Laccy*, 108 Cal. 326, where an ordinance for the establishment of a steam carpet beating machine was sustained, as that was a health ordinance, and the City of Los Angeles cannot pass, under the guise of a health measure, an ordinance that has no relation whatever to the public health; the *Slaughterhouse Cases*, 16 Wallace 36, which were health regulations; the case of *Barbier v. Connolly*, 113 U. S. 27, in reference to the conduct of a public laundry between the hours of ten o'clock at night and six o'clock in the morning, which had reference to a fire regulation; or the case of *Knoxville v. Bird*, 12 Lea, 121, which had reference to fire limits ordinance and affected the public safety; or the case

of *Davenport v. City of Richmond*, 81 Virginia 636, where the ordinance in question was in reference to the keeping and selling of gun powder and affected the public safety; or lottery cases, which affect the public morals. It will be for the learned counsel for the respondent to show any case in which the police power has been allowed to infringe upon vested rights by determining that any enterprise was a nuisance unless the same was a nuisance *per se*.

The plaintiff in error, Caroline W. Dobbins, had vested rights; she had civil rights pledged by legislative authority, by permission of the City Council of the City of Los Angeles by authority of the Board of Fire Commissioners, to whom it was delegated. Under this legislative authority the said plaintiff in error has expended large sums of money in the attempt to erect these gas works. The city should be estopped by its own grants. Having once established a district and having invited the said plaintiff in error by virtue thereof to acquire certain property rights therein, the city has exhausted its powers and has no power to change the district in violation of those rights, unless it comes within some legitimate police regulation under a changed condition of affairs; and we urge and insist that the ordinance of March 3rd, 1902, does not come within what is known as the police power, but is in violation of vested rights.

THIRD: A COURT OF EQUITY HAS POWER TO RESTRAIN BY INJUNCTION A MUNICIPALITY FROM INSTITUTING CRIMINAL PROCEEDINGS WHEN SUCH PROSECUTIONS ARE THREATENED UNDER COLOR OF AN INVALID ORDINANCE FOR THE PURPOSE OF COMPELLING THE RELINQUISHMENT OF A PROPERTY RIGHT.

This question relates to the equity jurisdiction of the court.

We have demonstrated that the prosecutions instituted by the defendant in error, the City of Los Angeles, were under invalid ordinances and that the plaintiff in error, Caroline W. Dobbins, had a vested property right, acquired by legislative authority, on which she had expended large sums of money, which the defendant in error was endeavoring to coerce her into relinquishment of by prosecutions under these invalid ordinances.

It is alleged in the complaint that the defendant in error conducted these prosecutions under the guise of enforcing the invalid ordinances to which we have called this Court's attention, and that it threatened that if the said plaintiff in error continued to carry on her work in which she was engaged in building the said gas works and manufactory for the manufacture of gas, that it would arrest all persons employed and engaged in said work until it should have stopped the construction of said gas works and compelled the said plaintiff in error to desist from the erection thereof.

Under these circumstances, the remedy in equity was available and was the only complete remedy of the plaintiff in error.

While, as a general rule, equity will not interfere by injunction to restrain the prosecution of suits for violation of municipal ordinances, there are certain distinctions to be observed in applying this rule.

These distinctions and exceptions to the general rule are best illustrated by the case referred to at the opening of our brief, which was before this court at the October term, 1903, *Davis & Farnum Manufacturing Company v. City of Los Angeles*, 189 U. S. 207.

This was a bill in equity filed in the Circuit Court for the Southern District of California by appellant therein, a citizen of Massachusetts, to restrain the City of Los Angeles and its officers from enforcing certain municipal ordi-

nances, prohibiting the erection or maintenance of gas tanks or reservoirs within certain portions of the city.

The gravamen of the bill was that on September 1, 1901, Caroline W. Dobbins made a contract with the Valley Gas and Fuel Company, a California corporation, to build certain gas works for her, including all things necessary for the manufacture, recovery and storage of gas, on lands thereafter to be designated; that on September 17 the appellant made a contract with the Gas and Fuel Company to erect upon Mrs. Dobbins' premises a water tank and gas holder, having a capacity of 100,000 cubic feet of gas, and that immediately thereafter it constructed and prepared the material and machinery necessary for the erection of the tank and gas holder, and shipped the same to Los Angeles; that on September 28, Mrs. Dobbins purchased certain lands in Los Angeles, which were within the limits wherein it was lawful to erect gas works as described in a municipal ordinance adopted August 26, 1901, and on November 1 applied to the board of Fire Commissioners for a permit to erect such gas works; that on November 22, her petition came on for hearing before the Fire Commissioners, and after proof had been made that all provisions of prior ordinances had been complied with, the matter was duly considered, and finally resulted, November 22, in a vote to grant a permit to erect and maintain the gas works.

That upon the 22d day of November, Mrs. Dobbins' contractors began at once to lay the foundation for said works at a cost of upwards of $2,500, when on November 25, the city adopted an ordinance, amending that of August 26, 1901, including her property in the prohibited territory for the erection or maintenance of gas works, which ordinance, however, seems to have proved defective, and subsequently in February, 1902, caused certain of the employes of the Gas and Fuel Company to be arrested, charging them with

a violation of the ordinance. Subsequently under new proceedings certain employes of the plaintiff were arrested and the work stopped.

Another ordinance was passed on March 3, 1902, also amending that of August 26, 1901, and other arrests were made of the employes for a violation of this ordinance. It was averred that the gas works are in an uncompleted condition, exposed to the elements and in danger of being destroyed, and that all of the aforesaid ordinances were adopted by the Common Council at the instigation of the Los Angeles Lighting Company, which had enjoyed a monopoly of the gas business for the last ten years.

A demurrer was filed to this bill by the city for want of equity and of jurisdiction, which was sustained by the court, and the bill dismissed. (115 Fed. Rep. 537), apparently upon the ground that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. Whereupon an appeal was taken to this Court:

Mr. Justice Brown delivered the opinion of this Court:

"The court below did not pass upon the validity of these ordinances, but came to the conclusion that a bill in equity would not lie to restrain their enforcement, and in this aspect we shall discuss the case. As the only method employed for the enforcement of these ordinances was criminal proceedings it follows that the prayer of the bill to enjoin the city from enforcing these ordinances or prevent plaintiff from carrying out its work, must be construed as demanding the discontinuance of such criminal proceedings as were already pending, and inhibiting the institution of others of a similar character.

That a court of equity has no general power to enjoin or stay criminal proceedings unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there, or to prohibit the invasion

of the rights of property by the enforcement of an unconstitutional law, was so fully considered and settled in an elaborate opinion by Mr. Justice Gray, (*In re Sawyer*, 124 U. S. 200), that no further reference to prior authorities is deemed necessary, and we have little more to do than to consider whether there is anything exceptional in the case under consideration to take it out of the general rule. The plaintiff in the case of Sawyer sought to restrain the mayor and committee of a city in Nebraska from removing a city officer under charges filed against him for malfeasance in office. This was held to fall within the general rule and not within the exception.

The general rule that a Circuit Court of the United States, sitting as a court of equity, cannot stay by injunction proceedings pending in a State court to enforce the criminal laws of such State, was applied in *Harkrader v. Wadley*, (172 U. S. 148,) to a case where the plaintiff sought to enjoin proceedings against him for the embezzlement of the assets of a bank; and in *Fitts v. McGee*, (172 U. S. 516,) to a suit brought by the receiver of a railroad against the attorney general of the State to restrain him from instituting or prosecuting criminal proceedings to enforce against the plaintiff the provisions of a State law reducing the tolls, which had been exacted of the public by the railroad, of which the plaintiff was receiver. This was held to be in reality a suit against the State to enjoin the institution of criminal proceedings, and hence within the general rule.

Plaintiff seeks to maintain its bill under the exception above noted, wherein, in a few cases, an injunction had been allowed to issue to restrain an invasion of rights of property by the enforcement of an unconstitutional law, where such enforcement would result in irreparable damages to the plaintiff. It cites in that regard the case of *Regan v. Farmers' Loan & Trust Co.*, (154 U. S. 362,) in which, under a law of Texas giving express authority to a railroad company or other party in interest to bring suit against the railroad commissioners of that State, a bill was sustained against such commission to restrain the enforcement of unreasonable and unjust rates and in the opinion a few

instances were cited where bills were sustained against officers of the State, who, under color of an unconstitutional statute, were committing acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. It would seem that if there were jurisdiction in a court of equity to enjoin the invasion of property rights through the instrumentality of an unconstitutional law, that jurisdiction would not be ousted by the fact that the State had chosen to assert its power to enforce such law by indictment or other criminal proceeding. (*Springfield Spinning Co. v. Riley*, L. R. 6 Eq. 558.)"

Besides the authorities cited by this court in support of the foregoing propositions, we refer to other cases cited by us in the brief *supra*.

The fact that municipal and city regulations are usually rendered effective by making their violation punishable offenses does not militate against the jurisdiction of a court of equity to protect all property right against invasion by invalid ordinances.

This Court in the case of *Detroit v. Detroit Citizens Street Railroad Company*, 184 U. S. 368, well decided that the presence or absence of penalties for disobedience of the ordinance did not alter the principle, and confining the question before this Court to the principle, as we have stated it, that courts of equity will enjoin the enforcement of void city ordinances to prevent a multiplicity of actions or to protect property rights injuriously affected or impaired thereby, especially when they are acquired under legislative authority, gives no cause for alarm that courts of equity would be found "exercising supervisory power over the administration of a part, not inconsiderable of the criminal laws of the country."

The case made by the complaint filed herein by Caroline W. Dobbins, plaintiff in error, presents strong questions for equitable interference. The municipal authorities of

the City of Los Angeles, in violation of all the rights of Caroline W. Dobbins, plaintiff in error, passes ordinances that absolutely prohibited the erection of the work in which the said plaintiff in error and her employes were engaged and attempted to intimidate and coerce those engaged in the work to submit to their lawless exactions and stop all work in which the employes of the said plaintiff in error were engaged by arrests and threats of fine and imprisonment. The city authorities have already four times arrested the employes of the said plaintiff in error and solemnly avowed that it was their intention to keep on arresting them daily until they stopped and desisted from all work upon the enterprise in which they were engaged. We have shown that they were engaged at the time of the passage of this ordinance, in a lawful occupation.

The plaintiff in error, Caroline W. Dobbins, has no remedy against the defendant in error for damages, for in the absence of a statutory provision in the State of California imposing the liability, a municipal corporation is not liable for the misfeasance, malfeasance or non-feasance of its officers.

The defendant in error was not liable for the wrongful arrest and imprisonment by its officers of the employes of the plaintiff in error, Caroline W. Dobbins, or forcing the said plaintiff in error to desist and cease from the work of constructing the gas works. *Stedman v. San Francisco*, 63 Cal. 193; *Chope v. Eureka*, 78 Cal. 508; *Doeg v. Cook*, 126 Cal. 213.

The complainant has no speedy and adequate remedy at law and it is a fundamental principle of equity jurisprudence that a remedy at law must be as practical and efficient to the ends of justice, and its prompt administration as the remedy in equity.

The long delays incident to the trial of actions at law

when the men are arrested, before the magistrate, on appeal, on habeas corpus and on writs of error, with work delayed, contracts unfulfilled and heavy damages incurred, and the plaintiff in error ruined, the remedy at law is not such an adequate remedy as may be had in equity where once for all, and without a multiplicity of suits, matters that affect not simply the plaintiff in error, but the interests of the entire community, involved in public utilities such as are described in this complaint, may be determined.

In the case of *Boyce's Executors v. Grundy*, 3 Peters, 377, this Court, referring to the sixteenth section of the judiciary act prohibiting suits in equity where there is a plain adequate remedy at law, said: That section was "merely declaratory on the subject of legal remedy. It is not enough that there is a remedy at law. It must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity."

In the case of *Walla Walla City v. Walla Walla Water Company*, 172 U. S. 1, 12, this Court also said: "This Court has repeatedly declared in affirmance of the generally accepted proposition that the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity. *Boyce's Executors v. Grundy*, 3 Pet. 210, 215; *Ins. Co. v. Bailey*, 13 Wall. 616, 621; *Kilbourn v. Sunderland*, 130 U. S. 505, 514; *Tyler v. Savage*, 143 U. S. 79, 95."

If "courts of equity did not interfere in cases of this sort, there would be a great failure of justice in this country." 2 Story, Eq. Jur., Sec. 928.

We may therefore conclude that when property rights are involved a court of equity may enjoin the enforcement of a void city ordinance to prevent a multiplicity of actions, or to protect the property rights injuriously affected or impaired thereby.

FOURTH. WHERE THE SENTENCE AND JUDGMENT OF A COURT IS BASED UPON AN ORDINANCE WHICH IS UNCONSTITUTIONAL, THE JUDGMENT AND SENTENCE OF SAID COURT IS WITHOUT AUTHORITY AND IS VOID, AND THE DEFENDANT IMPRISONED UNDER IT WILL BE DISCHARGED ON HABEAS CORPUS.

It is proper for this Court, under a writ of habeas corpus, to inquire into the validity of the law or ordinance under which a prisoner is held in custody, as affecting the jurisdiction of the Court which ordered his imprisonment.

In re Coy, 127 U. S. 731-758.

The ordinances, therefore, under which the prisoner, Martin Daly, is held in custody, being invalid, he is entitled to his discharge.

We, however, desire to call this Court's attention in this connection to the case of *Yick Wo vs. Hopkins*, 118 U. S. 356, where this Court considered the same discrimination in the enforcement of the ordinance that is attempted in this case. It is alleged in the petition for a writ herein (Transcript Daly case, fol. 24) that the Southern Pacific Railroad is operating outside of the district in which, by said ordinance of the city of Los Angeles under which this plaintiff in error was arrested, it is lawful to erect or maintain gas works, a large, extensive works for the generation of gas; that at said works of said Southern Pacific Railroad Company are maintained and operated retorts, holders and all necessary appliances for the manufacture of gas on a large and extensive scale; and, also, the gas works of the California Fruit Canners' Association, at the corner of Macy and Anderson streets in the said city of Los Angeles, and without the limits of the alleged district defined

by said ordinance where it is unlawful to operate gas works, at which gas is manufactured and stored by the said cannery company are being operated in plain violation of the terms of the alleged ordinance upon which this prosecution is based, and that said ordinance has not been enforced against said corporations.

There can be no distinction drawn between the principles laid down in the case of *Yick Wo v. Hopkins,* and the admitted facts as disclosed by the petition of Martin Daly in this proceeding. The petition discloses, to quote from this Court in the case last referred to, that this case presents "the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration and those representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the 14th Amendment of the Constitution of the United States."

CONCLUSION.

The supreme question in this case, however, is the protection of private rights from an unwarranted and unconstitutional assumption of power by a governing municipal body. While the judiciary is the protecting power of the whole government, it is also charged with the unhampered protection of private rights. When a collision must unhappily exist between the government and private rights, private rights, as well as sovereign powers, are protected by the constitution. To this Court is wisely committed the solution as to whether the exercise of governmental

powers is unwarranted and unconstitutional and infringes upon private rights. Fortunately, it is not left to the mere fiat of a municipal council. However, members of a legislative body may pass laws in the exercise of their general discretion, they are not superior to the judiciary in the determination of the validity of such laws. This should be especially so when individuals have applied to the legislative power to interfere with private rights and private property. Such applications have in some instances met with favor and support. To give security to private rights, these interferences are subject to judicial revision, whether the motives of the legislative body are to be considered or not.

Much has been said about whether the courts will consider the motives which actuate the municipal legislative body in adopting these ordinances. The question need not be considered further. Suffice it to say that this Court will examine all the circumstances that surround the adoption of these ordinances and the object sought to be obtained thereby and will therefrom determine their reasonableness and validity and whether they are not oppressive and operate to the unlawful confiscation of private rights.

It has been demonstrated that these ordinances have no real or substantial relation to either the health, safety, comfort or welfare of the public. It is not sufficient that any business or occupation, if negligently managed or recklessly conducted will injure the public health. This will not justify a municipal legislative body in prohibiting that business or occupation from being properly conducted. If these ordinances are to be justified on the ground of public safety, the same considerations apply. Comfort and welfare are relative terms dependent on conditions and circumstances which must be made apparent—almost self-evident.

The admitted facts in these cases preclude the possibility of any justification being found for the adoption of or-

dinances so far reaching and extreme as those in question in the attempt of the municipal legislative body to interfere with the lawful use of private property.

The questions presented by these records affect not only the plaintiff in error, Mrs. Caroline W. Dobbins, because of the large amounts involved, but they affect the interests of the entire community in which it is proposed, by her, to conduct the business of supplying a public utility. They affect also all other business enterprises of the State of California, for if these rights are no longer inviolable, but may be put in jeopardy at any time by the will of the municipal authorities, then property rights may be taken away, or their use perverted. It would be a most dangerous precedent, and one not to be tolerated by this Court, to hold that all property was subject to the mere will and fiat of the municipal authorities. Large enterprises would not be undertaken, without the security given and protection afforded by the inviolability of contracts and the constitutional guaranty that private property shall not be taken without due process of law.

Respectfully submitted,

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,

Attorneys for Plaintiffs in Error.

Supreme Court

OF THE

United States

Caroline W. Dobbins,
Plaintiff in Error,

vs.

The City of Los Angeles,

BRIEF AND ARGUMENT ON BEHALF OF DEFENDANT IN ERROR.

This is a case in error to the Supreme Court of the State of California, to review a judgment of that court affirming the judgment of the Superior Court of the State of California, in and for the county of Los Angeles, dismissing the complaint of the plaintiff, Caroline W. Dobbins, in a suit brought by her against the city of Los Angeles, for an injunction to restrain the city and its officials from enforcing certain ordinances prohibiting the erection or maintenance

of gas works or receptacles for the storage of gas, outside the limits of a certain prescribed district in said city.

The complaint alleged substantially as follows:

Statement of the Case.

That on August 26th, 1901, the council of the city of Los Angeles adopted ordinance No. 6663 (new series), making it unlawful "for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory, for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles," outside of the limits of a certain district, described in the ordinance, and prescribing the penalty for a violation of such ordinance. (tr. p. 1-3, fols. 5-9).

That about September 1st, 1901, the plaintiff, Caroline W. Dobbins, made a contract with the Valley Gas and Fuel Company, a corporation, whereby that company undertook to erect for the plaintiff certain gas works and coke ovens for the manufacture, recovery and storage of gas, on premises in said city thereafter to be designated by the plaintiff. (tr. p. 1, fol. 6.)

That thereafter, to-wit: about September 28th, 1901, the plaintiff, for the purpose of erecting such gas works and coke ovens, purchased cer-

tain premises within the limits of the district described in ordinance No. 6663 (new series). (tr. p. 3, fol. 9.)

That about November 1st, 1901, the plaintiff made application to the board of fire commissioners of the city of Los Angeles, for a permit to erect gas works upon the premises purchased by her, under the provisions of ordinance No. 6108 (new series), of the city of Los Angeles, making it unlawful "for any person..... to erect or cause to be erected..... any ..... gas works ..... within the corporate limits of said city, without a permit from the fire commissioners so to do." (tr. p. 4-5, fols. 10-12.)

That on November 22nd, 1901, the board of fire commissioners of the city of Los Angeles granted the application of the plaintiff; and thereupon, on the same day, the plaintiff directed the Valley Gas and Fuel Company to proceed at once with the erection of the gas works and coke ovens upon the premises so purchased by her; and, pursuant to such direction, that company entered into contracts for the erection of different portions of said gas works and coke ovens; that the foundations were constructed at a cost of upwards of $2,500, and that, if the same should have to be destroyed or removed, it would cause irreparable injury to the plaintiff and the Valley Gas and Fuel Company; that about November

25th, 1901, after all material for the construction of said foundations had been placed upon the ground and the foundations had been nearly completed, the city council passed ordinance No. 6779 (new series), amending ordinance No. 6663 (new series), above mentioned, so as to extend the boundaries of the territory within which the erection or maintenance of gas works, gas tanks or reservoirs, was prohibited. That the premises of the plaintiff were included in such extended boundaries. (tr. p. 6-10, fols. 14-22.)

Plaintiff also alleged that said ordinance No. 6779 (new series), is void and invalid in that it is uncertain, unreasonable, and is an attempt to regulate in an unlawful manner the business of erecting gas works, and is in violation of the rights of plaintiff under the contract between her and the contractors for the erection of said gas works, and in violation of the rights granted to her by the city under the aforesaid permit, and is in violation of the constitutional prohibitions against the passing of any law impairing the obligations of contracts. (tr. p. 9, fol. 19.)

That the work of constructing the gas works and coke ovens for plaintiff was prosecuted, without interruption, until the latter part of February, 1902, when, as plaintiff alleges, the city of Los Angeles, combining and confederating with one James R. C. Burton and other persons unknown to the plaintiff, caused certain employes

of the Valley Gas and Fuel Company, engaged upon said work, to be arrested on a complaint filed in the city police court, charging them with a violation of ordinance No. 6779 (new series); that on March 1st and March 3rd, 1902, respectively, other employes of that company were arrested, at the instance of the city, on like charges. (tr. p. 11-12, fols. 24-25.)

That on March 3rd, 1902, the city council adopted ordinance No. 7029 (new series), again amending ordinance No. 6663 (new series) in respect to the description of the district from which gas works and gas receptacles should be excluded (tr. p. 12 fol. 26), and that on March 6th, 1902, the city caused several persons, employed by the Valley Gas and Fuel Company on the work of constructing the gas works for the plaintiff, to be arrested upon the charge of violating the amended ordinance (tr. p. 14, fol. 30).

Plaintiff also alleged that said ordinance No. 7029 (new series) is void and invalid in that it is uncertain, unreasonable, and is an attempt to regulate in an unlawful manner the business of erecting gas works, and is in violation of the rights of plaintiff under the contract between her and the contractors for the erection of said gas works, and in violation of the rights granted to her by the city under the aforesaid permit, and is in violation of the constitutional prohibitions

against the passing of any law impairing the obligations of contracts. (tr. p. 14, fol. 29.)

That the city of Los Angeles threatens to, and, unless restrained by an order of court, will, institute other similar proceedings against and arrest the employes of the plaintiff and of her contractors, and continue such prosecutions until the plaintiff desists from the erection of said gas works. (tr. p. 15-16, fols. 31-32.)

That the adoption by the city council of the city of Los Angeles of the ordinances under which the arrests, mentioned in the complaint, were made, and the attempted enforcement thereof by the prosecuting officers of the city, were instigated by officers and agents of the Los Angeles Lighting Company, a corporation engaged in manufacturing and supplying gas in the city of Los Angeles, and having a monopoly of such business therein; and that the acts of the municipal authorities were done solely for the purpose of protecting the Los Angeles Lighting Company in the enjoyment of its monopoly of the gas business in the city of Los Angeles (tr. pp. 19-21, fols. 40-43).

That the territory surrounding the premises of the plaintiff is and was a district devoted to manufacturing and commercial enterprises almost exclusively, and that it embraces a large amount of vacant and unoccupied land, which is and will

continue to be, comparatively worthless, except as sites for manufacturing establishments. (tr. pp. 21-22, fols. 44-45.)

That the gas works, which are being constructed for the plaintiff, are to be built upon concrete foundations, with a superstructure of incombustible materials, and that there can be no danger from explosions, bursting or leakage; that the machinery is to be of the most approved pattern, and that the works can, and will be, operated and maintained so that there will be no leakage or escape of odors or any interference with the health, comfort or safety of the inhabitants of the city of Los Angeles. (tr. p. 22, fols. 45-46.)

That if the city of Los Angeles, its officers and employes, shall be allowed to arrest, and continue to arrest, the employes of the plaintiff, and her contractors, engaged in the erection of said gas works or in the operation and maintenance thereof when completed, the plaintiff will be deprived of the rights and property she has already acquired, and will suffer great and irreparable loss; that already, in consequence of the acts of the defendant in hindering and delaying the plaintiff, as alleged in the complaint, she has suffered damages in the sum of upwards of $25,000; that in the erection of said works the plaintiff has already expended upwards of the sum of $50,000, over and above the cost of the premises upon which the same are located, and if she is

compelled by the defendant to desist from completing said works, this expenditure will be entirely lost to her, and that she will be subjected to great expense, inconvenience and embarrassment, without any redress or adequate remedy at law. (tr. pp. 23-24, fols. 46-48.)

The plaintiff prays in her complaint, that the permit granted to her by the board of fire commissioners of the city of Los Angeles on November 22nd, 1901, upon her application for leave to erect said gas works, be declared to be a valid and existing contract between the city of Los Angeles and the plaintiff, and that all ordinances passed by the city council of said city in contravention thereof, be declared null and void, as against the plaintiff; that the defendant, its officers, attorneys or agents, and all persons combining or confederating with it, and each and every of them, be enjoined and restrained from enforcing said ordinances against the plaintiff, and from in any manner delaying, interfering with, or obstructing the plaintiff in erecting said works, and from interfering with the operation or maintenance of the same; and that the plaintiff may have general relief (tr. pp. 24-25, fols. 48-50).

To this complaint a demurrer was interposed on behalf of the city, upon the grounds:

(1.) That the complaint did not state facts sufficient to constitute a cause of action;

(2.) That the court had no jurisdiction of the defendant or of the subject of the action (tr. p. 26, fols. 51-52).

The court sustained the demurrer to the complaint; and it was ordered and decreed that the plaintiff take nothing by her action. (tr. p. 27, fols. 52-53).

The plaintiff appealed from this judgment to the Supreme Court of the state, which affirmed the judgment (tr. pp. 30-33, fols. 59-65). (Caroline W. Dobbins v. The City of Los Angeles, 139 Cal. 179.)

The assignment of errors presented by the plaintiff in error upon this appeal are substantially as follows:

That the Supreme Court of the state of California erred in deciding:

1. That the ordinance complained of was valid as to the rights of plaintiff in error acquired before its passage;

2. That said ordinance was a valid police regulation;

3. That said ordinance did not impair the obligation of contracts made before the passage of the ordinance;

4. That said ordinance did not deprive plaintiff of property without due process of law; and

5. That the court erred in not deciding that the plaintiff in error was entitled to an injunction

restraining the city from enforcing said ordinance by criminal prosecution. (tr. pp. 45 to 47, fols. 86 to 89.)

While the plaintiff in error, in her complaint, attacks the validity of ordinances Nos. 6779 and 7029 (new series), and asks to have the city restrained from enforcing either of them, on the ground that they are unconstitutional and void, yet the Supreme court of the state in its opinion discusses only the validity of ordinance No. 7029, and plaintiff in her assignment of errors specifies the decision of the state court as to the last named ordinance only as being erroneous, and, accordingly, we shall, in our argument, treat this ordinance as the one in controversy, especially, as it appears from the record that it has taken the place of the former ordinance No. 6779 on the same subject.

BRIEF OF THE ARGUMENT.

I.

The enactment of the ordinance drawn in question was fully within the police powers of the city of Los Angeles.

Constitution of California, Sec. 11, Art XI.

Statutes of California, 1869-70, p. 815.

Charter of Los Angeles, Secs. 2, 25, 27 and 40.

Statutes of California, 1889, p. 458.

Munn v. Illinois, 94 U. S. 113.

Westfield G. and M. Co. v. Mendenhall, 142 Ind. 538.

New Orleans Gas Co. v. Louisiana L. Co., 115 U. S. 650.

Tiedeman on Police Powers, Vol. II, p. 740.

Jamieson v. Indiana Natural G. & Oil Co., 28 N. E. 76.

Lanigan v. N. Y. Gas & L. Co., 71 N. Y. 29.

Ex-parte Lacy, 108 Cal. 326.

Crowley v. Christensen, 137 U. S. 86.

II.

The allegations of the complaint as to the unreasonableness of this ordinance are not sufficient to sustain a decision against its validity.

Slack v. Jacob, 8 W. Va. 612.

Harmon v. City of Lewiston, 46 Am. St. Rep. 893.

Darnelly v. Cabanns, 52 Ga. 212.
Wells v. Mayor, 43 Ga. 67.
State v. Schlenker, 51 L. R. A. 351.
People v. Cipperly (N. Y.), 4 N. E. 108.
In re Wilshire, 103 Fed. 620.
Barbier v. Connolly, 113 U. S. 27.

III.

All rights in contracts and property are held subject to such regulations as may be made from time to time by the State for the protection of public health, comfort and safety.

Cooley Cons. Lim., 6th Ed. 707.
Mugler v. Kansas, 123 U, S. 669.
Corporation of Knoxville v. Bird, 12 B. J. Lea, 121.
City of Salem v. Maynes, 123 Mass. 372.
Barbier v. Connolly, 113 U. S. 27.
City of New Orleans v. Stafford, 21 Am. Rep. 563.
2 Story Cons. Lim., Sec. 1954.
Jamieson v. Ind. Natural G. & Oil Co., 28 N. E. 76.

IV.

A municipality cannot in any manner barter away, part with or abridge its right to exercise the police powers delegated to it by the State.

Cooley Cons. Lim., 6th Ed., p. 341.
Russell on Police Powers, p. 88.
Davenport v. City of Richmond, 81 Va. 636.

Newson v. City of Galveston, 13 S. W. 368.
Northwestern Fertilizer Co. v. Hyde Park, 97 U. S. 659.

V.

The question, whether the State court erred in refusing to consider or decide the claim of plaintiff in error that she was entitled to an injunction against the enforcement of the ordinance complained of by criminal prosecution, does not arise on this appeal.

VI.

A bill in equity will not lie to restrain the enforcement of a municipal ordinance by criminal prosecution upon the mere ground of its alleged invalidity.

In re Sawyer, 124 U. S. 200.
Fitts v. McGhee, 172 U. S. 528.
Davis and Farnum Mfg. Co. v. Los Angeles, 115 Fed. 537.
Davis and Farnum Mfg. Co. v. Los Angeles, 189 U. S. 207.
Hemsley v. Myers, 45 Fed. 283.
Wagner v. Drake, 31 Fed 849.
Minneapolis Brewing Co. v. McGillivray, 104 Fed. 272.

VII.

The motives of a legislative body in enacting a law cannot be inquired into by the courts.

Fletcher v. Peck, 6 Cranch 87.

Dodge v. Wolsey, 18 How. 371.

U. S. v. Des Moines R. R. Co., 142 U. S. 545.

Hing v. Crowley, 113 U. S. 703.

ARGUMENT.

I.

The enactment of the ordinance drawn in question was fully within the police powers of the City of Los Angeles.

The ordinance complained of (being ordinance No. 7029, new series) was one prohibiting the establishment or maintenance of gas works, or receptacles for the storage of gas, in the city of Los Angeles outside of a certain prescribed district. The enactment of this ordinance was fully within the police powers delegated to the city by the state.

Section 11 of Article XI. of the constitution of California provides that:

"Any county, city, town or township, may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

An act of the legislature of California, approved April 4th, 1870, relating to gas companies, gives authority to all municipal corporations in the state to grant to any gas company the privilege of laying down pipes in their streets and alleys, and, in section 4 thereof, provides that—

"They may also control the location and construction of works so that they may be erected in suitable localities to give the least discomforture or annoyance to the public." (Statutes of California, 1869-70, page 815.)

This act was expressly continued in force by subdivision 20, section 19, of the Political Code of the state of California.

The charter of the city of Los Angeles contains the following provisions:

Section 2. "The said corporation shall have the power * * * (Sub. 22) to make and enforce within its limits such local, police, sanitary and other regulations as are not in conflict with general laws, and are deemed expedient to maintain the public peace, protect property, promote the public morals, and to preserve the health of its inhabitants."

Section 25. "It may, by ordinance, declare what constitutes a nuisance, and provide for the abatement and removal thereof."

Section 27. "It (the council) shall by ordinance, regulate, and may prohibit, the keeping of gun powder, acids, or other explosive, combustible or inflammable material within the limits of the city, or any specified part thereof."

Section 40. "The council shall also have full power to pass ordinances upon any other subject of municipal control or to carry into effect any other powers of the municipality."

Charter of Los Angeles;

Stats. of Cal. 1889, p. 458.

From these provisions it will be seen that the city of Los Angeles has general police powers, and that such powers are, by the statutes of the state and the city charter expressly extended to the regulation and conduct of the business of manufacturing and distributing gas, and of the

keeping of combustible or inflammable material within the city.

It is within the police power to regulate all occupations and business enterprises which are of a *quasi*-public nature, or which may, if not restricted in their exercise, be injurious to the public health, safety, morals, or to the general welfare.

Accordingly it has been held that the police power extends to regulation of the location and conducting of markets, laundries, bakeries, pawnshops, dairies, warehouses, wharves, ferries, and railways.

"This brings us to inquire as to the principles "upon which this power of regulation rests in "order that we may determine what is within and "what is without its operative effect. Looking "then to the common law, from whence came the "right which the constitution protects, we find "that when private property is 'affected with a "public interest, it ceases to be *juris privati* only.' "This was said by Chief Justice Hale more than "two hundred years ago, in his treatise "De portibus Maris," 1 Harg. Law Tracts, 78, and has "been accepted without objection as an essential "element in the law of property ever since. Property thus becomes clothed with a public interest "when used in a manner to make it of public consequence, and affects the community at large. "When, however, one devotes his property to a "use in which the public has an interest, he, in "effect, grants to the public an interest in that "use, and must submit to be controlled by the "public for the common good to the extent of

" the interest he has thus created. He may with-
" draw his grant by discontinuing the use; but,
" so long as he maintains the use, he must sub-
" mit to the control."

Munn v. Illinois, 94 U. S. 113, 126.

" The business of manufacturing and distribut-
" ing illuminating gas, by means of pipes laid in
" the streets of a city, is a business of public
" character. It is the exercise of a franchise be-
" longing to the state. The services rendered
" and to be rendered for such grant are of a pub-
" lic nature."

Westfield Gas & Milling Co. v. Mendenhall, 142 Ind. 538.

" It is true, as suggested in argument, that the
" manufacture and distribution of illuminating
" gas by means of pipes or conduits placed, under
" legislative authority, in the streets of a town
" or city, is a business of a public character. Un-
" der proper management, the business contri-
" butes very materially to the public convenience,
" while, in the absence of efficient supervision, it
" may disturb the comfort and endanger the
" health and property of the community."

New Orleans Gas Co. v. Louisiana Lighting Co., 115 U. S. 650, 658.

The business of manufacturing and distributing illuminating gas is not only one of *a quasi*-public character, but, as indicated in the case last cited, is one which may, if not regulated, become injurious to the health, comfort or safety of the community in which it is carried on, and, for that reason, is within the police power of the state.

This is true even though such business is perfectly lawful, and is not a nuisance *per se*.

Mr. Tiedeman in his work on "Police Powers," volume 2, at page 740, says:

"Where, therefore, certain trades and employ-
"ments which serve some useful purpose and add
"something to the world's wealth are harmful to
"the inhabitants of the locality in which they may
"be conducted; and the harm may be avoided al-
"together or considerably reduced by confining
"them to localities in which the population is
"sparse and the residences are few, it is alto-
"gether permissible to prohibit the prosecution
"of these trades in other localities * * * In
"the same way may the manufacure of pressed
"hay, the maintenance of dairies, the cultivation
"of land within the limits of a town, and the
"storage of cotton and other combustible ma-
"terial, such as oil and gun powder, be prohibited
"in densely settled parts of the city, and the
"prosecution of such trades be confined to cer-
"tain less dangerous localities."

In the case of Jamieson v. Indiana Natural Gas & Oil Co., et al., 28 N. W. 76, involving the question of the constitutionality of an act of the legislature of Indiana prohibiting the use of an artificial pressure in pipe lines used for the transportation of natural gas of more than 300 pounds to the square inch, the court said:

"The question, as the record presents it, is one
"of power. With questions of policy or expedi-
"ency the courts have no concern. License tax
"cases, 5 Wal. 462; Herrerich v. State, 101 Ind.
"564. If a subject is within the legislative power,
"the question whether that power is wisely or un-
"wisely exerted is not a judicial one. * * * *

"A distinctive and conspicuous feature of this "case is that the property upon which the statute "operates is dangerous and is of an extraordi- "nary species and nature. That natural gas is "a dangerous agency is a matter of common "knowledge; and hence courts take judicial no- "tice of that fact. We know, as the legislature "knew, and as every one knows, that natural gas "is in a high degree inflammable and explosive. "Surely, no court would require evidence to in- "form it that artificial gas will ignite and ex- "plode, or that gun powder and dynamite are "intrinsically dangerous; * * * * But we "need not at this place discuss this phase of the "subject at length for the adjudged cases very "clearly show that the courts will take judicial "notice of the qualities of such things as arti- "ficial gas, kerosene, gun powder, dynamite or "the like. Lanigan v. Gas Light Co., 71 N. Y. "29; Wood v. Insurance Co., 46 N. Y. 421; Com. "v. Peckham, 2 Gray 514; Schlicht v. State, 56 "Ind. 173; Frese v. State, 2 So. Rep. 1; State v. "Hayes, 78 Missouri 308; Lohman v. State, 81 "Ind. 15. * * * * We hold without hesita- "tion that natural gas is so dangerous that its "use may be made the subject of police regula- "tion. Decision after decision recognizes the "priciple we have stated and upholds laws regu- "lating the use of property." (Citing cases.)

"The properties of the illuminating gas in or- "dinary use, its inflammable and explosive char- "acter, are well understood, and every person of "mature mind and ordinary intelligence cannot "be presumed to be ignorant of it."

Lanigan v. New York Gas and Light Co., 71 N. Y. 29, 33.

That the city of Los Angeles has the power, under the provisions of the state constitution and of its charter, to regulate the location of business enterprises which are not nuisances *per se,* but the conduct of which may injuriously affect the public health, comfort or safety, has been specifically decided by the Supreme Court of California.

In the case of *ex parte* Lacy, 108 Cal. 326, which involved the validity of an ordinance of the city of Los Angeles prohibiting the maintenance of a steam carpet beating machine within 100 feet of any church, school house, residence or dwelling-house, the court, after quoting article XI., section 11, above set forth, stated:

"It will thus be observed that Los Angeles "city is vested with certain powers by direct "grant from the constitution, and that grant of "power is not confined within narrow limits, but "is broad and far reaching in its scope and ef- "fect. Under this grant of power the city had "the right to pass this ordinance, unless it is in "conflict with general laws; and we know of no "general laws which conflict with it, unless it "can be said to be violative of those general "principles of constitutional liberty which form "the very foundation of both state and federal "constitution. We see nothing in the language "of this ordinance contrary to these great prin- "ciples of our government. We see nothing "there depriving petitioner of any fundamental "rights. In the exercise of its police and sani- "tary power the city has attempted to regulate "the business of beating carpets by steam power.

"Under its constitutional grant it had the right "to regulate this business. The use of steam "power of itself, within municipal territory, has "always been recognized as the proper subject "of regulation; and, in addition here, it may well "be assumed that the dust and other disagree- "able and unhealthy matters arising in such "quantities from the beating of the carpets, as "would naturally be indicated by the use of steam "power, are a constant source of danger and "menace to the good health and general welfare "of the neighborhood where located.

"Conceding the business covered by the pro- "visions of this ordinance not to constitute a "nuisance *per se* and to stand upon different "grounds from powder factories, street obstruc- "tions and the like, still the case is made no bet- "ter for the petitioner. This is not a question of "nuisance *per se*, and the power to regulate is "in no way dependent upon such conditions. In- "deed, as to nuisances *per se*, the general laws "of the state are ample to deal with them. But "the business here involved may properly be "classed with livery stables, laundries, soap and "glue factories, etc., the class of business under- "takings in the conduct of which the police and "sanitary regulations are made to a greater or "less degree by every city in the country. And "in this class of cases it is no defense to the valid- "ity of regulation ordinances to say: 'I am com- "mitting no nuisance, and I insist upon being "heard before a court or jury upon that question "of fact.' In this class of cases a defendant has "no such right. To the extent that it was ma- "terial in creating a valid ordinance we must as- "sume that such question was decided by the "municipal authorities and decided against the "petitioner and all others similarly situated."

Ex parte Lacy, 108 Cal. 326.

The ordinance in question does nothing more than restrict the erection and maintenance of gas works and gas receptacles to a certain district within the city—presumably the most suitable locality for such business. Such restriction is nothing more than a simple and necessary regulation of the business of manufacturing and storing gas. Considering the well known nature and character of illuminating gas, that it is highly inflammable and explosive, and considering further the equally well known fact that its manufacture is inseparably attended with noxious vapors and offensive odor, we submit that the business is one which may become a menace to the safety, health and comfort of the neighborhood in which it is carried on, and that it is, therefore, subject to police regulation.

"As to the enjoyment of property, the rule is "general that it must be accompanied with such "limitations as will not impair the equal enjoy-"ment by others of their property. *Sic utere tuo* "*ut alienum non laedes* is a maxim of universal "application. For the pursuit of any lawful "trade or business, the law imposes similar con-"ditions. Regulations respecting them are al-"most infinite, varying with the nature of the "business. Some occupations, by the noise made "in their pursuit, some by the odors they en-"gender, and some by the dangers accompanying "them, require regulations as to the locality in "which they shall be conducted. Some by the "dangerous character of the articles used, man-"ufactured or sold, require, also, special quali-

" fications in the parties permitted to use, manu-
" facture or sell them."

Crowley v. Christensen, 137 U. S. 86, 90.

II

The allegations of the complaint as to the unreasonableness of this ordinance are not sufficient to sustain a decision against its validity.

The complaint alleges that the ordinance complained of is unreasonable, and sets forth the fact that the district described in the ordinance, from which gas works are excluded, is one devoted almost exclusively to manufacturing and commercial enterprises. This fact is, however, we submit, insufficient to show the unreasonableness of the ordinance. It is well settled that objections made upon this ground are regarded with great circumspection by the courts, and such objections will be sustained only in very clear cases, because the power to select the subjects of legislation, within constitutional limits, is committed to the law-making branch of the government, and the decision of the question of the expediency or reasonableness of a law is necessarily involved in the exercise of the legislative discretion used in enacting the law.

" The expediency or inexpediency of an act is
" a question for the legislature and not for the
" court. Whenever an act of the legislature can

" be so construed and applied as to avoid a con-
" flict with the constitution and give it the force
" of law, such construction will be adopted by the
" courts.

" Courts have no right to set aside, to arrest or
" nullify a law passed in relation to a subject
" within the scope of the legislative authority on
" the ground that it conflicts with their notions
" of natural rights, absolute justice or sound
" morality."

Slack et al. v. Jacob et al., 8 W. Va. 612.

" Under a general grant of power over nui-
" sances, town authorities have no power to adopt
" an ordinance declaring a thing a nuisance which
" in fact is clearly not one, but in doubtful cases
" depending upon a variety of circumstances re-
" quiring judgment and discretion their action is
" conclusive."

Harmon v. City of Lewiston, 46 Am. St. Rep. 893.

" When a town council is authorized by law to
" do a particular act at its discretion, the courts
" will not control this discretion and inquire into
" the propriety, economy and general wisdom
" of the undertaking, or into the details of the
" manner adopted to carry the project into exe-
" cution."

Darnelly v. Cabanns, 52 Ga. 212.

Wells v. Mayor, 43 Ga. 67.

" That the constitutionality of a statute ought
" not to be made to depend on the finding of a jury
" on the facts of a case is manifest. If the plain
" provisions of the constitution have been vio-

" lated, or if the act cannot be said to be a proper " exercise of the police power, in view of the " facts of which judicial notice may be taken, then " the duty of declaring the act invalid is clear. " But in the absence of such finding the act " stands."

State v. Schlenker (Ia.) 51 L. R. R. 351.

" But the defendant takes the broader ground " that the legislature cannot, under the constitu- " tion, prohibit the sale of milk from healthy " cows which in the natural state falls below the " standard fixed by the act unless such milk or " the articles made from it are in fact unwhole- " some or dangerous to public health. How is " that question of fact to be determined? The " court cannot take judicial notice whether the " milk below the standard is or is not unwhole- " some or dangerous to public health. Is that to " be a question for the jury? If so, a court must " charge a jury in each case if they find milk be- " low the standard to be unwholesome, then the " statute is constitutional; if they find it whole- " some, then the statute is unconstitutional. Evi- " dently a constitutional question cannot be set- " tled, or rather unsettled, in that way. The con- " stitutionality would vary with the varying " judgment of juries. Either then the legislature " can, under the constitution, forbid the sale of " milk below a certain standard, whether such " milk be in fact wholesome or not, or else they " cannot do this whether that milk be in fact " wholesome or not. If they may fix a standard, " they must judge whether or not milk below that " standard is wholesome. The courts cannot re- " view that judgment."

People v. Cipperly (N. Y.) 4 N. E. 108.

In the case of *in re* Wilshire, 103 Fed. 620, an

ordinance of the city of Los Angeles prohibiting the erection of advertising signboards of a greater height than six feet, was attacked on the ground that it was unreasonable. The judge in his opinion said:

" I entertain a good deal of doubt in respect to " the reasonableness of the maximum limitation " placed upon the structures in question by the " municipal authorities of the city of Los An- " geles, but the fact that this doubt exists is suffi- " cient reason for the court to decline to adjudge " the ordinance invalid. It is only in clear cases " that such a judgment should be given."

Even if plaintiff's contention as to the unreasonableness of this ordinance, as presented in the state court, had any merit, we submit that, after having been considered by that court, it cannot be urged or considered here. The question of the unreasonableness of an ordinance is one properly left to the decision of the state court. As was said by Mr. Justice Field, in the case of Barbier v. Connolly, 113 U. S. 27:

" Our jurisdiction is confined to a consideration " of the federal question involved, which arises " upon an alleged conflict of the 4th section (of " the ordinance) in question with the 1st section " of the 14th amendment of the Constitution of " the United States. * * The provision is purely " a police regulation within the competency of " any municipality possessed of the ordinary

" powers belonging to such bodies. And it would
" be an extraordinary usurpation of the authority
" of a municipality if a federal tribunal should un-
" dertake to supervise such regulations. It may be
" a necessary measure of precaution in a city
" composed largely of wooden buildings like San
" Francisco, that occupations, in which fires are
" constantly required, should cease after certain
" hours at night until the following morning;
" and of the necessity of such regulations the mu-
" nicipal bodies are the exclusive judges; at least
" any correction of their action in such matters
" can come only from state legislation or state
" tribunals."

Barbier v. Connolly, 113 U. S. 27.

There is nothing on the face of the ordinance showing that it is unreasonable or oppressive, but, on the contrary, it is, by its terms, applicable to all persons alike, and, so far as can be judged from the description of the district set forth therein, outside of which gas works or gas receptacles may not be erected or maintained, the territory contained in such district is an extensive one.

Since then the ordinance is free from patent defects, and its reasonableness has been sustained by the state courts, the highest judicial tribunal will not go behind that decision.

III.

All rights to contracts and property are held subject to such regulations as may be made from time to time by the state for the protection of public health comfort and safety.

The contention of plaintiff in error, as evidenced by her complaint, is that the grant of the permit by the board of fire commissioners for the erection of the gas works on her premises gave rise to a contract between the city and herself, and that the adoption subsequently of the ordinance complained of impaired the obligation of such alleged contract; second, that the adoption of this ordinance also impaired the obligations of the contract entered into between plaintiff in error and the contractor for the erection of the gas works; and, third, that the grant of the permit, and the commencement of the erection of the gas works on the premises of plaintiff in error, prior to the adoption of such ordinance vested in her the right to complete said works and to operate the same; and that the adoption of such ordinance violated these rights.

The contract which plaintiff assumes to exist between her and the city is one arising out of the grant by the board of fire commissioners of a permit for the erection of the gas works. The permit in question was granted in the exercise of the police power for the protection of property from fire, under an ordinance requiring every person proposing to establish or conduct a livery stable, blacksmith shop, gas works, or any factory where

power other than animal or water power is used, to first obtain a permit from the fire commissioners therefor. The effect of the permit was simply to remove the restriction upon the use of property imposed by the ordinance, and to give to the owner of the property the privilege of using it just as he might if no such restriction existed. The grant of such a permit can in no sense be deemed to be the grant of a franchise, or of a property right, and therefore no contractual obligations can spring out of it. After receiving such a permit the owner of property is in no better position to claim that the city is estopped to impose regulations prohibiting the use of the property contemplated by the permit, than he would be if the ordinance requiring the procurement of a permit had never existed.

Furthermore, if this ordinance is within the scope of the police power of the city, as we have shown to be the case, whatever contracts or rights are held by plaintiff in error, they must be subject to this power.

Mr. Cooley, in his work on constitutional limitations, in discussing the police power of the states, especially with respect to the impairment of obligations of contracts by the exercise of that power, says:

"All contracts and all rights, it is declared, are "subject to this power; and not only may regula- "tions which affect them be established by the "state, but all such regulations must be subject "to change from time to time, as the general well- "being of the community may require, or as the

" circumstances may change, or as experience
" may demonstrate the necessity.

" Perhaps the most striking illustrations of the
" principle here stated will be found among the
" judicial decisions, which have held that the
" rights insured to private corporations by their
" charters, and the manner of their exercise, are
" subject to such new regulations as from time to
" time may be made by the state with a view to
" the public protection, health and safety, and
" in order to guard properly the rights of other
" individuals and corporations. Although these
" charters are to be regarded as contracts, and
" the rights assured by them are inviolable, it
" does not follow that these rights are at once,
" by force of the charter contract, removed from
" the sphere of state legislation, and that the
" charter implies an undertaking, on the part of
" the state, that in the same way in which their
" exercise is permissible at first, and under the
" regulations then existing and those only, may
" the corporators continue to exercise their
" rights, while the artificial existence continues.

" The obligation of the contract by no means
" extends so far; but, on the contrary, the rights
" and privileges which come into existence under
" it are placed upon the same footing with other
" legal rights and privileges of the citizen, and
" subject in like manner to proper rules for their
" due regulation, protection and enjoyment."

Cooley Cons. Lim., 6th Ed. 707.

" It cannot be supposed that the states intend-
" ed by adopting that amendment (the 14th), to
" impose restraints upon the exercise of their
" powers for the protection of the safety, health
" or morals of the community. * * * The
" principle that no person shall be deprived of life,
" liberty or property without due process of law,
" was embodied, in substance, in the constitutions

" of nearly all, if not all, of the states at the time
" of the adoption of the Fourteenth Amendment;
" and it has never been regarded as incompatible
" with the principle,—equally vital because es-
" sential to the peace and safety of society,—that
" all property in this country is held under the
" implied obligation that the owner's use of it
" shall not be injurious to the community." * *

" A prohibition simply upon the use of prop-
" erty for purposes that are declared by valid
" legislation to be injurious to the health, morals
" and safety of the community, cannot in any just
" sense be deemed a taking or an appropriation of
" property for the public benefit. Such legisla-
" tion does not disturb the owner in the control or
" use of his property for lawful purposes, nor
" restrict his right to dispose of it, but is only a
" declaration by the state that its use by any one
" for certain forbidden purposes is prejudicial to
" the public interests."

Mugler v. Kansas, 123 U. S. 669.

In the case of the Corporation of Knoxville v. Bird, 12 B. J. Lea, 121 (Tenn.), the defendant was arrested and convicted for the violation of an ordinance prohibiting the erection of wooden buildings in a certain district. The defendant contended that the ordinance was unconstitutional, on the ground that it impaired the obligations of his contracts with the lessor of the lot upon which his building was being erected and with the builders who had commenced and were engaged in the erection of the building thereon at the time the ordinance was adopted; and also on the ground that it impaired his vested rights.

The court held that there was no merit in this contention, and in its discussion of the constitutional question thus raised, said:

"It is true the exercise of this power by the "city authorities tends in a considerable degree "to impinge upon and restrain the free use of "the property of parties living within the pre- "scribed limits, the highest idea of property be- "ing that over which man has complete dominion, "with which he may do as he pleases. But it is "an essential element of every organized society "that even this right is to be enjoyed in subordi- "nation to the general public interest of the whole "body. For the benefits conferred by the pro- "tection given by law, and the general advan- "tages received from organized society, this en- "tire freedom is subject to be abridged and reg- "ulated within certain bounds, only limited by "the requirements that private property shall not "be taken or appropriated for public use without "compensation being first made for the property "thus used. The defendant in this case has only "been required to submit his rights to the rule "that a man must enjoy them subject to such "regulation as the interest of the society of "which he is a member may demand."

Corporation of Knoxville v. Bird, 12 B. J. Lea, 121.

And in the case of City of Salem v. Maynes, 123 Mass. 372, it was held that an ordinance providing that a wooden building should not be built within a certain distance of any other wooden building, applied to one for the erection of which a contract had been made and lumber bought and

prepared before the ordinance took effect. In the case of City of New Orleans v. Stafford, 21 Am. Rep. 563, the court held that an act of the legislature providing that no private market should be kept within 12 squares of a public market in the city of New Orleans was not unconstitutional as taking away the property or vested rights of those keeping, and holding licenses to keep, private markets within the prescribed limits at the time of the passage of the act.

"The fourteenth amendment of the United " States constitution is not designed to interfere " with the power of the state sometimes termed " its 'police power' to prescribe regulations to " promote the health, peace, morals, education " and good order of the people."

Barbier v. Connolly, 113 U. S. 27.

"All property and vested rights of individuals " are subject to such regulations of police as the " legislature may establish."

2 Story Con. Sec. 1954.

"It is not too much to say that as against the " police power there is no such thing as a vested " right. * * * No investement, however great, " can so vest a right as to preclude the exercise " of a great governmental power, such as that " under which regulations for the protection of " the health and safety of persons are enacted. " This principle is supported by many decisions. " In Beer Co. v. Mass., 97 U. S. 32, it was said, " 'If the public safety or public morals require " the discontinuance of a manufacture or traffic, " the hands of the legislature cannot be stayed " from providing for its discontinuance by any

"inconvenience which individuals or corpora-
"tions may suffer."

Jamieson v. Ind. Natural Gas & Oil Co., 28 N. E. 76, 79.

Applying the principles laid down in the foregoing decisions to the claim of the plaintiff, as set forth in the complaint, that the ordinance in controversy is unconstitutional and void because it impairs the obligation of a contract between her and the city and the obligation of the contract between her and the builders of the gas works, and also deprives her of vested rights, we submit that there is no merit therein.

IV.

A municipality cannot in any manner barter away, part with or abridge its right to exercise the police powers delegated to it by the state.

It has already been shown that the permit granted to plaintiff in error by the board of fire commissioners to erect the gas works did not constitute, or result in, a contract between plaintiff in error and the city and we now submit the proposition that no contract could be made by the city which would have the effect of disabling or abridging its police power.

"It would seem, therefore, to be the prevail-
"ing opinion, and one based upon sound reason,
"that the state cannot barter away, or in any
"manner abridge or weaken, any of those essen-
"tial powers which are inherent in all govern-
"ments, and the existence of which in full vigor
"is important to the well-being of organized so-
"ciety; and that any contracts to that end are
"void, upon general principles, and cannot be
"saved from invalidity by the provision of the
"national Constitution, now under considera-
"tion."

Cooley Cons. Lim., 6th Ed. p. 341.

"The general principle is that it is not within
"the power of a common council to bind its legis-
"lative capacities by any arrangement or stipu-
"lation so as to disable itself from enacting any
"laws that might be deemed essential for public
"good."

Russell on Police Powers, page 88.

In the case of Davenport v. City of Richmond, 81 Va. 636, the city council had conveyed to defendant's grantors certain premises near the outskirts of the city to be used as a powder magazine. A subsequent ordinance declared the said magazine dangerous to life and property and directed it to be removed, at the expense of the owner, to some more remote locality. Davenport claimed that the ordinance was invalid and unconstitutional, because it deprived him of vested rights and impaired the obligation of a contract entered into between the city and his grantors,

and took from him his property without compensation. The court said:

" Upon the principles recognized by this court " in R. F. and R. R. Co. v. City of Richmond, 26 " Gratt., 83, we are of opinion that this position " is not well taken. In other words, that the " withdrawal of the privilege previously granted " to the defendants—to erect and maintain a " powder magazine within the city limits—was " a valid exercise of the police power with which, " to that extent, the city is invested by the legis- " lature, and with reference to which the privilege " was granted and accepted. And hence the in- " conveniece of which the defendants complaint is " *damnum absque injuria.*

" However difficult it may be, if it is possible " at all, to exactly define the limits of that power, " there is no doubt that it extends to the protec- " tion of the lives, health, morals and safety of all " persons in the community, and that it cannot, " by contract or otherwise, be parted with by a " municipal corporation to which it may be dele- " gated. * * * * * * * * * * * * * *

" It is sufficient to say that the storage of gun- " powder in a city or town, being attended with " danger, its regulation is a matter within the " power of corporate authorities, and consequent- " ly the judgment of the city council as expressed " in the ordinance requiring the removal of the " magazines in question, is conclusive upon the " courts.

" The Hastings court, therefore, did not err in " instructing the jury that 'the fact that the city " of Richmond in 1866 sold to the defendants, or " to those under whom they claim title, the site " of the powder magazines, now ordered by the " council to be removed, for the purpose or with " the knowledge that the same was to be used

" for the erection of powder magazines, does not " prevent the city council from passing the ordi- " nance of August 17, 1882, if, in the judgment " of that body, the safety or convenience of the " people demands the removal of said mag- " azines.' "

Davenport v. City of Richmond, 81 Va. 636.

In the case of Newson v. City of Galveston, 13 S. W. 368, the plaintiff was granted a permit under a city ordinance to establish and maintain a meat market at a particular location. Thereafter the city council so amended the ordinance under which plaintiff's permit was granted as to make it unlawful to conduct a meat market in the district in which plaintiff's market was situated. It was contended that the amended ordinance impaired his vested rights and the obligation of his contract with the city. With reference to this contention the court said:

" Police powers possessed by such (municipal) " corporations cannot be fettered by contracts, " but must be left free to be exercised at all times " whether in conferring, or withdrawing priv- " ileges once conferred. If a license tax had been " paid for a year, this would not deprive the city " of the power to withdraw the privilege before " its expiration if the public welfare demanded it. " Much less would the fact that the city for a " time had received the tax and granted the priv- " ilege make it incumbent on it to continue to do " so. If appellant expended money in preparing " his private market place for the conduct of his " business, he did so with the full knowledge that

"the city might at any time forbid the business "(market) to be there conducted."

Newson v. City of Galveston, 13 S. W. 368.

In the case of Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659, it was held that a grant by the state to a private corporation of the privilege of manufacturing fertilizer could be abrogated by an ordinance of the village of Hyde Park to which general police power had been subsequently delegated by the state. That the fertilizing company could thus be compelled to abandon the works which it had erected and established at a cost of more than $200,000, and that the village ordinance was not such impairment of the obligation of the charter contract between the company and the state as is forbidden by the constitution of the United States.

Even if it be assumed, therefore, that by the grant of the permit by the board of fire commissioners for the establishment of the gas works by the plaintiff, the city authorities consented and agreed to the erection and maintenance of such works, yet it is clear that the city, by such consent, was not deprived of the right, under its police power, subsequently to prohibit the erection or maintenance of the same.

V.

The question whether the state court erred in refusing to consider or decide the claim of plaintiff in error that she was entitled to an injunction against the enforcement of the ordinance complained of by criminal prosecution does not arise on this appeal.

The relief prayed for by plaintiff in error in her complaint was, that the permit granted by the board of fire commissioners be declared to be a valid and existing contract between her and the city; that the ordinance of the city, passed subsequent to the grant of such permit, be declared null and void; that the defendant city be enjoined from attempting to enforce said ordinance by criminal prosecution, and that the defendant be enjoined from, in any manner, obstructing the plaintiff in error from erecting or operating the gas works. The state court decided that the permit granted by the board of fire commissioners was not a contract; that the ordinance complained of did not impair the obligations of contracts, and was not an unwarranted interference with the enjoyment of property; but that it was a valid police regulation, and held that "this view makes it unnecessary to consider the question elaborately discussed by counsel, to-wit, whether or not a court of equity will ever

enjoin a criminal prosecution." One of the errors assigned is, that the state court erred in not determining that the plaintiff in error was entitled to the relief in a court of equity enjoining the city from enforcing, by criminal prosecution, the said ordinance.

But it is submitted that this assignment presents no decision of the state court for re-examination by this court. Furthermore, the question whether the state court, sitting as a court of equity, had power to restrain by injunction the enforcement of a municipal ordinance by criminal prosecution, on the ground that such ordinance is invalid, is not Federal in character, but is one relating solely to the application of local or general law.

If the state court had held that an injunction would not lie under such circumstances, that decision would not have been subject to review by this court, because it would not have involved the determination of a Federal question; much less will an appeal lie to this court from the action of the state court in declining to pass upon the question whether or not a court of equity will ever enjoin a criminal prosecution. However, we anticipate that counsel for plaintiff in error will discuss this question in their argument, and we beg, therefore, to submit the following proposition pertinent thereto:

VI.

A bill in equity will not lie to restrain the enforcement of a municipal ordinance by criminal prosecution upon the mere ground of its alleged invalidity.

This rule is explicitly announced in the leading case of *In re* Sawyer:

"From long before the Declaration of Inde-
" pendence it has been settled in England that a
" bill to stay criminal proceedings is not within
" the jurisdiction of the court of chancery,
" whether those proceedings are by indictment or
" by summary process * * * The modern de-
" cisions in England, by eminent equity judges,
" concur in holding that a court of chancery has
" no power to restrain criminal proceedings, un-
" less they are instituted by a party to a suit al-
" ready pending before it, and to try the same
" right that is in issue there. * * * * And
" in the American courts, so far as we are inform-
" ed, it has been strictly and uniformly upheld
"and has been applied alike whether the prose-
" cutions or arrests sought to be restrained arose
" under statutes of the state, or under municipal
" ordinances."

In re Sawyer, 124 U. S. 200-225.

" Undoubtedly, the courts of the United States
" have the power, under existing legislation, by
" writ of habeas corpus, to discharge from cus-
" tody any person held by state authorities under
" criminal proceedings instituted under state en-
" actments, if such enactments are void for repug-
" nancy to the Constitution, laws or treaties of the
" United States. * * * But the existence of
" the power in the courts of the United States to

" discharge upon habeas corpus by no means im-
" plies that they may, in the exercise of their
" equity powers, interrupt or enjoin proceedings
" of a criminal character in a state court. The
" plaintiffs state that the toll-gatherers in their
" service had been indicted in a state court for
" violating the provisions of the act of 1895 in
" respect of tolls. Let them appear to the indict-
" ment and defend themselves upon the ground
" that the state statute is repugnant to the Con-
" stitution of the United States. * * * *
" And if the question is determined adversely to
" the defendants in the highest court of the state
" in which the decision could be had, the judg-
" ment may be re-examined by this court upon
" writ of error. That the defendants may be fre-
" quently indicted constitutes no reason why a
" Federal court of equity should assume to inter-
" fere with the ordinary course of criminal pro-
" cedure in a state court."

Fitts v. McGhee, 172 U. S. 528, *et seq.*

We submit that the exception to the general rule, that a court of chancery has no power to restrain criminal prosecutions, is clearly stated in the foregoing quotation from the case of *in re* Sawyer, and that a court of equity has no such power, *"unless they"* (the criminal prosecutions or proceedings) *"are instituted by a party to a suit already pending before it, and to try the same right that is in issue there."* As was stated by the judge of the Circuit Court for the southern district of California, in the case of Davis & Farnum Co. v. City of Los Angeles, 115 Fed. 537, 542, referring to the rule laid down in the Saw-

yer case, "This unambiguous and definite statement of the rule does not admit of any exception, other than the one which it expressly shows." The Davis & Farnum case was a suit brought in the Circuit Court of the United States to enjoin a threatened criminal prosecution under the same ordinance drawn in question in this case, on the ground that the ordinance was invalid, and that the purpose and effect of the threatened prosecution was to compel complainant, who was the subcontractor for the erection of the gas works referred to in the present case, to abandon said work, thereby destroying or impairing complainant's vested property rights. The questions presented in that case related to the equitable jurisdiction of the court and to the validity of said ordinance. The Circuit Court, after a careful examination and analysis of the authorities, held that it had no jurisdiction as a court of equity to restrain, or to enjoin, criminal prosecutions under the ordinance complained of, even though it was alleged to be unconstitutional, and that the purpose and effect of the prosecution was to injure complainant in its property rights, for the reason that complainant was not within the exception to the rule of equity jurisdiction laid down in the Sawyer case. On appeal, this court affirmed the decree of the Circuit Court dismissing the bill, placing its decision on the ground that the appellant had shown no legal interest in

the controversy between Mrs. Dobbins and the city with respect to her right to erect the proposed gas works, and on the further ground that it did not appear that the complainant had no complete and adequate remedy at law against the principal contractor. This disposition of the case made it unnecessary for this court to decide whether or not criminal prosecutions might be enjoined by a court of equity. The court, however, referred to the decision *In re Sawyer*, *supra*, as having "so fully considered and settled" this question, that, in a controversy in which it is presented, "No further reference to prior authorities is deemed necessary, and we have little more to do than to consider whether there is anything exceptional in the case under consideration to take it out of the general rule."

Davis & Farnum M'f'g. Co. v. Los Angeles, 189 U. S. 207, 217.

We, therefore, confidently rely upon the case of *In re Sawyer* as determinative of the proposition that criminal prosecutions under the ordinance complained of in this case could not be enjoined by a court of equity, since such prosecutions are outside of the exception to, and fully within, the general rule enunciated in the Sawyer case. There is a distinction, often lost sight of, but very necessary to be observed, between the power of a court of equity to enjoin the en-

tempted enforcement of invalid laws or ordinances, by the acts of state officers done under color of such laws or ordinances(as, for example by seizure of property), and the jurisdiction of the court to enjoin the commencement of criminal prosecutions under such laws or ordinances. In the case of Minneapolis Brewing Co. v. McGillivray, et al., 104 Fed. 258, the plaintiff brought suit, in the Circuit Court for the district of South Dakota, against the sheriff, the chief of police, the state's attorney and the members of the board of county commissioners, to restrain and enjoin them from attempting to enforce payment from the plaintiff of an alleged unlawful license fee, and from in any wise interfering with plaintiff's warehouse and business. The plaintiff, in its bill, showed that it had its principal place of business in the state of Minnesota, and that it had a warehouse in the city of Madison, South Dakota, at which it had been carrying on the business of receiving and storing, as a wholesaler, malt liquors manufactured by it, and selling and delivering the same in original packages to customers in the state of South Dakota. That, under a statute of the state, alleged by complainant to be unconstitutional, the defendants were demanding of plaintiff the payment of a license fee of $600, and upon the refusal of plaintiff to pay the same were threatening to close said warehouse and prosecute

plaintiff and its local agent for a separate violation of such statute for each day said warehouse was operated. Plaintiff prayed that the statute in question might be adjudged unconstitutional and the defendants be restrained from attempting to enforce payment of said license or in any way interfering with plaintiff's warehouse. The Circuit Court held that the case was one over which equity had jurisdiction, for the reason that the complainant had no plain, speedy and adequate remedy at law for the damages which it would suffer if the defendants were allowed to seize and close its place of business, and for the damages resulting from the destruction thereby of plaintiff's business; and that the law complained of, requiring the payment of a license fee of $600, was unconstitutional and void; and the court said:

"The only question that now presents itself is "as to the relief that this court has the power to "grant the complainant in this action. It is al- "leged in the bill that defendants, claiming to act "in their official capacity, threaten to close said "warehouse so operated and maintained by this "plaintiff at said city of Madison aforesaid, and "wrongfully and unlawfully threaten to prose- "cute criminally this plaintiff and its said local "agent, under section 5 of said act, and to so "prosecute for each violation committed on each "day, if said warehouse was continued to be op- "erated as aforesaid by plaintiff or if plaintiff "continued to transact the business theretofore "transcated by it at said Madison. In so far as

"this bill seeks to enjoin the commencement of "criminal proceedings, it cannot be maintained "A court of equity possesses no such power. This "is settled by a uniform current of authorities in "England for two centuries, and in this country "from the foundation of its jurisprudence. (Cit- "ing and quoting from *in re Sawyer,* 124 U. S. "210.) See also, Hemsley v. Myers (C. C.), "45 Fed. 283; Wagner v. Drake (D. C.), 31 "Fed. 849. "This court in this action has, in my "opinion, the right to restrain the defendants "from closing the complainant's warehouse and "place of business as provided in section 5 of the "act under consideration, for the non-payment "only of the license fee required of a wholesale "dealer in malt liquor; and, within this limita- "tion, the order will be that the demurrer be "overruled."

Minneapolis Brewing Co. v. McGillivray, 104 Fed. 272.

Another important distinction to be observed in the cases dealing with the power of a court of equity to enjoin criminal prosecutions, is that adverted to in the opinion of the court in the case of Southern Exp. Co. v. Mayor, etc., of Ensley, et al. In this case the plaintiff prayed for an injunction to enjoin the defendants from enforcing, as against complainant, a license ordinance which attempted to impose upon complainant—a common carrier engaged in interstate commerce—a license for the privilege of doing business in the city of Ensley. The court said:

"The necessities of this case do not require
"much discussion of the power of a court of equi
"much discussion of the power of a court of
"equity to stay or enjoin criminal prosecutions.
"* * * A license imposed for revenue is the ex-
"ercise of the taxing, not of the police, power,
"and prosecutions before the corporate tribunal
"for doing the business without a license are
"*quasi*-penal only, at most. In substance and le-
"gal effect, they are civil proceedings. Royall v.
"Virgina, 116 U. S. 583. The 'offense' does not
"violate any law for the preservation of the
"health, morals, liberty, or peace of the citizens
"of Ensley. Enjoining prosecutions of the 'of-
"fense' here, if there is any law to support it, does
"not in any wise interfere with the control of the
"local tribunals over the mass of governmental
"powers committed to them for the welfare of
"the people of Ensley under what, for want of a
"better name, we denominate the police power.
"It is about prosecutions for offenses under or-
"dinances directed solely to that end that many
"of the authorities are strict in holding that
"courts of equity must not interfere."

The distinction above referred to also applies to the cases like that of Central Trust Co. v. Citizens' St. R. Co., 80 Fed. Rep. 225, and Reagan v. Farmers Loan and Trust Co., 154 U. S. 362, in which courts have assumed jurisdiction to enjoin the enforcement of invalid statutes, criminal in form, but which were in legal effect civil or *quasi*-penal only, and under color of which the defendants, claiming to act as officers of the state, commit acts of wrong and injury to the rights

and property of the plaintiff, acquired under a contract with the state.

In conclusion upon this branch of the argument, we submit the following quotation from the opinion of Hon. Judge Wellborn, in the case of Davis & Farnum Mfg. Co. v. City of Los Angeles, 115 Fed. 537, 543:

"In addition to what has already been said, it "may be appropriately observed that municipal "and state regulations of saloons, beer halls, "theaters and places of amusement generally, "market places, slaughter houses, gas works, "powder magazines, laundries, cemeteries, fire "limits, streets (particularly obstructions, rail- "way tracks, telegraph poles, pipe lines, etc., "therein), indeed of all establishments, trades, "and occupations subject to the police power of "the state,—unavoidably affect property rights, "and are usually rendered effective by making "their violations punishable offenses. Now, if "there were such jurisdiction as that for which "complainant contends, every controversy over "the validity of an ordinance or statute relating "to any of the matters enumerated would furnish "an occasion for interference by injunction; and "thus would be presented the remarkable situ- "ation of courts of equity, state and federal, ex- "ercising supervisory power over the adminis- "tration of a part, not inconsiderable, of the "criminal laws of the country."

The motives of a legislative body in enacting a law cannot be inquired into by the courts.

It is suggested in the complaint that the ordinances referred to were adopted, not for the purpose of protecting any public interest or preserving any public right, but that they were suggested and formulated by the Los Angeles Lighting Company, and were adopted by the city council solely for the purpose of protecting that company in the enjoyment of a monopoly in manufacturing and distributing gas in the city of Los Angeles, and for the purpose of hindering and frustrating the efforts of the plaintiff to carry on her lawful business. That courts cannot inquire into the motives which influenced members of the legislature in passing a law has been the settled rule of this court since the decision of the case of Fletcher v. Peck, 6 Cranch 87. In the case of Dodge v. Wolsey, 18 Howard 371, Mr. Justice Campbell said: "The courts cannot look to the corruption, the blindness, nor the mischievious effects of state legislation to determine its binding operation." And in the case of United States v. Des Moines R. R. Co., 142 U. S. 545, this court said: "Although it has sometimes been argued at the bar that the courts ought to inquire into the motives of the legislature when fraud and corruption are alleged, and annul their actions if

the allegations were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered into."

"The rule is general with reference to the "enactments of all legislative bodies, that the "court cannot inquire into the motives of the "legislators in passing them, except as they may "be disclosed on the face of the acts or inferable "from their operation considered with reference "to the condition of the country and existing "legislation."

Hing v. Crowley, 113 U. S. 703.

For the reasons given and upon the authorities cited, we submit that the decision of the state court under review in this case contains no error justifying a reversal, and should be affirmed.

Respectfully submitted,

W. B. MATHEWS,

HERBERT J. GOUDGE,

Attorneys for Defendant in Error.

Supreme Court of the United States.

Nos. 107 and 108.—October Term, 1904.

Caroline W. Dobbins, Plaintiff in Error, *vs.* The City of Los Angeles. } In error to the Supreme Court of the State of California.

[November 14, 1904.]

This is a writ of error to the Supreme Court of the State of California seeking a reversal of the judgment of that court, affirming the judgment of the Superior Court dismissing the complaint of the plaintiff in error against the city of Los Angeles.

Plaintiff in error filed a bill of complaint against the city of Los Angeles, seeking an injunction to restrain the enforcement of certain ordinances prohibiting the erection or maintenance of gasworks except within prescribed limits in said city.

The case was decided upon demurrer to the bill. The complaint sets forth in substance: That on August 26, 1901, the city council of Los Angeles adopted an ordinance making it unlawful to erect and maintain gasworks outside of a certain district described in the ordinance and fixing penalties for the violation thereof. While this ordinance was in force the plaintiff in error made a contract with the Valley Gas and Fuel Company for the erection of certain gasworks upon territory to be thereafter designated by her, and on September 28, 1901, purchased lands within the limits of the privileged district as fixed by the ordinance. That on the 22d of November, 1901, upon application to the board of fire commissioners of the city of Los Angeles, that body granted to the plaintiff in error the privilege to erect the gasworks upon the territory aforesaid. Thereupon the plaintiff in error directed the Valley Gas and Fuel Company to proceed with the erection of the works upon the premises so purchased. That the foundations were constructed at a cost of upwards of $2,500. After the foundations had been nearly completed the city council, on November 25, 1901, passed a second ordinance, amending the first ordinance, and thereby so limiting the boundaries of the territory within which the erection of gasworks was permitted in said city as to include the premises of the plaintiff in error within the prohibited territory. The work of constructing the works was continuously prosecuted until the latter part of February, 1902, when the plaintiff in error alleges

that the city of Los Angeles, combining and confederating with one James R. C. Burton and other persons unknown, caused certain employes of the company engaged in the erection of said works to be arrested, charged with the violation of the said city ordinance. Other arrests were made on the first and third of March, 1902. On the third of March, 1902, the city council passed a third ordinance, amending the ordinance of November 25, 1901, in respect to the description of the district within which gasworks could be erected. On March 6, 1902, the city caused the arrest of certain persons employed by the company in charge of the erection of the works, charged with the violation of the amended city ordinance.

It is averred that the adoption by the city council of the ordinances aforesaid and the attempted enforcement thereof were instigated by officers and agents of the Los Angeles Lighting Company, a corporation engaged in manufacturing and supplying gas in said city, and having a monopoly of said business therein. It is further averred that the action of the municipal authorities complained of was taken for the purpose of protecting the said Los Angeles Lighting Company in the enjoyment of its monopoly. It is also claimed that the territory surrounding the premises of the plaintiff in error, and within which, under the ordinance of August 26, as force when the complainant made her purchase and located and began the erection of the gasworks it was lawful so to do, and which by the amending ordinances was added to the prohibited territory, was and is a district devoted almost exclusively to manufacturing enterprises. Within its boundaries there is a large amount of vacant and unoccupied land, which is and will continue to be useless except for the erection of manufacturing establishments, within which were located at that time a soap factory, a wool pulling factory, three wineries, numerous oil wells in operation, iron foundry, brass foundry, oil refinery; immediately east of said tract railroads and an extensive cannery; immediately north the oil tanks and refinery of the Standard Oil Company. That the works being constructed for the plaintiff in error are to be built upon concrete foundations with a superstructure of non-combustible material, so that there can be no danger from explosion, burning or leaking. The machinery is to be of the most approved pattern and that there can be no leakage or escape of odors or any interference with the health, comfort or safety of the inhabitants of the city.

The plaintiff in error, relying upon the protection of the Fourteenth Amendment to the Constitution of the United States, prays that the permit granted by the board of fire commissioners be declared to be a valid and subsisting contract between the city of Los Angeles and herself, and that all ordinances passed by the city council in contravention thereof be declared void; that the defendant be enjoined from enforcing said ordinances against the plaintiff, from delaying or interfering with the

action of the plaintiff in erecting the said works, from interfering with the maintenance and operation of the same, and for general relief.

Mr. Justice Day delivered the opinion of the Court.

As this case was decided upon demurrer to the complaint, the allegations thereof must be taken as true. The question presented involves the right of the plaintiff to resort to invoke the protection of the Fourteenth Amendment against alleged infraction of her rights by the action of the city council in passing and enforcing the ordinance which prevents the carrying on of the business of making and selling gas to the people of the city.

Before entering upon a consideration of the case it is essential to examine briefly the extent to which constitutional and legislative control have been exercised by authority of the State of California in reference to the erection and maintenance of gasworks in cities. The constitution of the State, section 19, article XI, provides that "in any city there has or public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of the State, shall, under the direction of the superintendent of streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof." By the act of the State legislature of April 8, 1870 (Stats. of 1869-70, p. 955,) it was provided that cities may control the location and construction of works so that they may be erected in suitable localities to give the least discomfort or annoyance to the public. By the constitution of the State of California it is provided (art. XI, sec. 11) that any county, city, town or township may make and enforce within its limits all such local police, sanitary or other regulations as are not in conflict with the general laws. In these provisions may be found a grant of power to the city of Los Angeles to control the location and erection of gasworks within the city limits. In the grant of such control the fact is recognized that while the erection and maintenance of such works is a lawful business, proper and one essential to the welfare and comfort of the community, its prosecution requires the use of materials of such a character, and such construction and maintenance of the works as not to be dangerous or offensive when carried on within thickly populated parts of the city, and such rights are conse-

quently justly subject to regulation in such manner as to protect the public health and safety. The Supreme Court of California, as may be gathered from its opinion in this case, based its decision upon the proposition that as the exercise of the right to control the location and construction of gasworks is within the power conferred by the legislature upon the city, the act of the municipality in question can not be reviewed, because so to do would be a substitution of the judgment of the court for that of the council upon a matter left within the exclusive control of the legislative body. To support this conclusion a citation is made from the opinion of this court in the case of *Munn* v. *Illinois*, (94 U. S. 113,) to the effect that the legislature is the exclusive judge of the propriety of police regulation when the matter is within the scope of its power. The observations of Mr. Chief Justice Waite in that connection had reference to the facts of the particular case and were certainly not intended to declare the right of either the legislature or a city council to arbitrarily deprive the citizen of rights protected by the Constitution under the guise of exercising the police powers reserved to the States. It may be admitted that every intendment is to be made in favor of the lawfulness of the exercise of municipal power, making regulations to promote the public health and safety, and that it is not the province of courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community. But notwithstanding this general rule of the law, it is now thoroughly well settled by decisions of this court that municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether under the guise of enforcing police regulations there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property. In *Lawton* v. *Steele*, (152 U. S. 133–37,) Mr. Justice Brown, speaking for the court, said upon this subject:

"To justify the State in thus interposing its authority in behalf of the public it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

And, again, in *Holden* v. *Hardy*, (169 U. S. 566,) the same justice, again speaking for the court, said:

"The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class."

And in *Connolly* v. *Union Sewer Pipe Co.*, (184 U. S. 540, 558,) Mr. Justice Harlan, delivering the opinion of the court, said:

"The question of constitutional law to which we have referred [the equal protection of the laws] cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this court, were not included in the grants of power to the general government, and therefore reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law.' The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. (*Gibbons* v. *Ogden*, 9 Wheat. 1, 210; *Sinnot* v. *Davenport*, 22 How. 227, 243; *Missouri, Kansas & Texas Ry.* v. *Haber*, 169 U. S. 613, 626.)"

This principle was recognized and applied in the Supreme Court of California in a case decided later than the one under consideration, (*In re Smith*, decided May 31, 1904, 77 Pacific Rep. 180,) in which it was held that a county ordinance making it a misdemeanor to maintain a gasworks within a sparsely settled district was unreasonable and void. In that case the court, after again quoting from *Munn* v. *Illinois*, to the effect that the courts will not interfere with laws which are within the scope of legislative power, well said:

"But running current with this principle, and to be read with it is one of equal importance, namely, that where the police power is exerted to regulate a useful business or occupation, the legislature is not the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue any trade, business or vocation which in itself is recognized as innocent and useful to the community. It is always a judicial question if any particular regulation of such right is a valid exercise of police power, though the power of the courts to declare such regulation invalid will be exercised with the utmost caution, and only where it is clear that the ordinance or law declared void passes the limits of the police power and infringes upon rights guaranteed by the constitution."

Applying the principles settled by these decisions to the allegations of the bill, admitted by the demurrer, we think a case is made which called for the protection of the courts against arbitrary interference with the rights of the plaintiff in error. Complying with the terms of the ordinance which was in force when the plaintiff in error was about to begin the erection of the gasworks in controversy, a tract of land was purchased within the district wherein the erection of such works was permitted, a contract was entered into for the construction of the works, a considerable sum of money was expended. It may be admitted as being a correct statement of the law as held by the California Supreme Court that, notwithstanding the grant of the permit, and even after the erection of the works, the city might still, for the protection of the public health and safety, prohibit the further maintenance and continuance of such works, and the prosecution of the business, originally harmless, may become, by reason of the manner of its prosecution or a changed condition of the community, a menace to the public health and safety. In other words, the right to exercise the police power is a continuing one, and a business lawful to-day may in the future, because of the changed situation, the growth of population or other causes, become a menace to the public health and welfare, and be required to yield to the public good. (*Fertilizing Co.* v. *Hyde Park*, 97 U. S. 659; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 672.) But the exercise of the police power is subject to judicial review and property rights cannot be wrongfully destroyed by arbitrary enactment. It was averred that the works would be so constructed so as not to interfere with the health or safety of the people. No reasonable explanation for the arbitrary exercise of power in the case is suggested. The narrowing of the limits within which the plaintiff in error, in compliance with the ordinance of the city and the permit of the board of fire commissioners, was proceeding to erect the gasworks, to the smaller and more limited section, was not demanded by the public welfare, and, taking the facts as alleged in the bill, seems rather to have been actuated by a purpose to exclude the plaintiff in error from further prosecution of the enterprise. The limits of the privileged district were fixed late in August. In September the complainant began the construction of the works. In November, without changed conditions or adequate reason, the council by an amended ordinance draw a line embracing a part of the district including the complainant's property, and declare that, too, shall be prohibited territory. This action is strongly corroborative of the allegations of the bill that the purpose was not police regulation in the interest of the public but the destruction of the plaintiff's rights and the building up of another company still within the privileged district after the passage of the amendment. Being the owner of the land and having partially erected the works the plaintiff in error had acquired property rights and was

entitled to protection against unconstitutional encroachments which would have the effect to deprive her of her property without due process of law. It is averred in the bill of complaint that the district within which the works were being erected was one given over to manufacturing enterprises, some of which were fully as obnoxious as gasworks possibly could be; that it contained large spaces of unoccupied lands, worthless except for manufacturing purposes, and by clear inference that there was nothing in the situation which rendered it necessary, in order to protect the city from a noisome and unhealthy business, to decrease the area within which gasworks could lawfully be erected.

It is urged that, where the exercise of legislative or municipal power is clearly within constitutional limits, the courts will not inquire into the motives which may have actuated the legislative body in passing the law or ordinance in question. Whether, when it appears that the facts would authorize the exercise of the power, the courts will restrain its exercise because of alleged wrongful motives inducing the passage of an ordinance is not a question necessary to be determined in this case, but where the facts as to the situation and conditions are such as to establish the exercise of the police power in such manner as to oppress or discriminate against a class or an individual the courts may consider and give weight to such purpose in considering the validity of the ordinance. This court, in the case of *Yick Wo* v. *Hopkins*, (118 U. S. 356,) held that although an ordinance might be lawful upon its face and apparently fair in its terms, yet if it was enforced in such a manner as to work a discrimination against a part of the community for no lawful reason, such exercise of power would be invalidated by the courts.

In some of the States, perhaps in most, the right to build and maintain gasworks is derived from the State, but subject to municipal control as to the use of the streets and the prices to be charged to consumers. In Ohio this price is regulated for stated periods. Could it be successfully maintained that after the erection of the works and the fixing of prices for a term of ten years, at the expiration thereof and exercising the right to fix prices for a new term, the council could arbitrarily, and with a view of compelling the sale of the works to the municipality or a rival company, fix the rate at a price below the cost of gas to the producer and at such a rate as to be ruinous to the business? In *State ex rel. The Attorney General* v. *The Cincinnati Gas Light & Coke Co.*, (18 Ohio St. 262,) it was held to be the legislative intention, in empowering city councils to regulate the price of gas, to limit such companies to fair and reasonable prices, and if in the colorable exercise of this power a majority of the members of the council, for a fraudulent purpose, combine to pass an ordinance fixing the price of gas at a rate at which they well know it cannot be manufactured and sold without loss, such an ordinance would impose no obligation on

the company. This case was cited with apparent approval by Mr. Justice Matthews in delivering the opinion of this court in *Yick Wo* v. *Hopkins supra*, and see Dillon Municip. Corps. 4th ed. § 311.

In this case we think the allegations of the bill disclose such character of territory, such sudden and unexplained change of its limits after the plaintiff in error had purchased the property and gone forward with the erection of the works, as to bring it within that class of cases wherein the court may restrain the arbitrary and discriminatory exercise of the police power which amounts to a taking of property without due process of law and an impairment of property rights protected by the Fourteenth Amendment to the Federal Constitution.

It is also urged by the defendants in error that a court of equity will not enjoin prosecution of a criminal case; but, as we have seen, the plaintiff in error in this case had acquired property rights which by the enforcement of the ordinances in question would be destroyed and rendered worthless. If the allegations of the bill be taken as true, she had the right to proceed with the prosecution of the work without interference by the city authorities in the form of arrest and prosecution of those in her employ.

It is well settled that where property rights will be destroyed unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity. (*Davis & Farnum Man. Co.* v. *Los Angeles*, 189 U. S. 207–218, and cases therein cited)

Upon the whole case, we are of opinion that the demurrer should have been overruled and the city of Los Angeles put upon its answer.

For the reasons herein stated, the judgment of the Supreme Court of California is reversed and the cause remanded to that court for further proceedings not in conflict with this opinion.

Supreme Court of the United States.

No. 108.—October Term, 1904.

Martin Daly, Plaintiff in Error,
vs.
Charles Elton, Chief of Police of the City of Los Angeles.

In error to the Supreme Court of the State of California.

[November 14, 1904.]

Mr. Justice Day delivered the opinion of the Court.

This case is practically determined by views expressed in *Dobbins* v. *The City of Los Angeles*, just decided. It was a petition for a writ of *habeas corpus* to discharge Daly from custody, in a prosecution under the ordinance under consideration in the Dobbins case. The prayer of the petition was denied and the writ discharged. (*In re Daly*, 139 Cal. 216.) Under the California practice, in the absence of issue joined the allegations of the petition are taken as true and the facts alleged therein are taken as admitted. (*In re Smith*, 77 Pac. Rep. 180.) The petition made allegations attacking the ordinance which, if true, would render it invalid for the reasons stated in the Dobbins case, *supra*, and the petitioner upon the record made should have been discharged from custody.

It is therefore ordered that the judgment of the Supreme Court of California be reversed and the cause remanded for further proceedings not inconsistent with the views announced in the Dobbins case, supra.

True copy.

Test:

Clerk Supreme Court, U. S.